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No. 505

IN THE

Supreme Court of the United States

October Term, 1954

ARTHUR D. BARTRON and ANNA KATHERINE BARTRON and NICHOLAS or NICK RONCA,

Petitioners,

—*v.*—

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, a Body Corporate Created by the Legislatures of the State of New Jersey and the Commonwealth of Pennsylvania.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners Arthur D. Bartron, Anna Katherine Bartron, and Nicholas or Nick Ronca, plaintiffs in the trial court, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on November 17, 1954, in the above entitled case, affirming a judgment of the United States District Court for the District of New Jersey which dismissed a complaint by the instant petitioners as plaintiffs seeking an injunction to restrain the Delaware River Joint Toll Bridge Commission from closing and demolishing a publicly-owned, toll-free, heavily-travelled vehicular bridge across the Delaware River between points in New Jersey and Pennsylvania.

Opinions Below

The opinion of the United States District Court for the District of New Jersey (R. 24a) is reported at 120 F. Supp. 337. The opinion of the United States Court of Appeals for the Third Circuit (pp. 25 *et seq., infra*) is not yet reported.

Jurisdiction

The judgment of the United States Court of Appeals for the Third Circuit which this petition seeks to have reviewed was dated and entered November 17, 1954. Jurisdiction of this Court is invoked under Section 1254 (1) of Title 28, U. S. C. (Act of June 25, 1948, c. 646, 62 Stat. at 928).

Questions Presented

1. Whether, in the bi-state companion legislation and congressionally approved interstate compacts adopted by New Jersey and Pennsylvania over the past 40 years relating to the publicly-owned Delaware River bridges (both toll and free) of the two States, the provisions relating to construction of new toll bridges have worked such an attrition of the unrepealed free bridge perpetual maintenance provisions as to justify the Delaware River Joint Toll Bridge Commission's proposed destruction of one of the publicly-owned free bridges, where such destruction is proposed because a newly constructed toll bridge located in the same general area as (but 2½ miles away from) the free bridge has been opened by the Commission,

and the Commission desires to divert to the new toll facilities travellers who would continue to use the free bridge in preference to paying tolls if it were not destroyed; or whether, on the contrary, the overall bi-state and congressionally approved legislative policy contemplates that both free and toll bridges shall co-exist.

2. Whether a covenant by the Commission to destroy the free state-owned bridge as an inducement to purchasers of bonds issued for the financing of the new toll bridge creates a state debt, pledge or gift in violation of the applicable state constitutional provisions which govern such creation; also, whether such a covenant violates the bi-state statutes and interstate compacts which expressly limit the Bridge Commission's pledging power solely to the pledging of toll bridge revenues; and whether the federal constitutional prohibition against impairment of the obligation of contracts may shield such a covenant if it be unconstitutional and *ultra vires* for the aforementioned reasons.

3. Whether, if the Commission *arguendo* has power to destroy a free bridge in the circumstances here presented and to covenant therefor with toll bridge bondholders, the power is an absolute and non-reviewable one or a conditional and reviewable one, and whether, if such destroying and covenanting power *arguendo* exists and is conditional, the Court below erred in approving the exercise of such conditional power in the present case, where no trial record or any other duly proven record exists by which the reasonableness, necessity or propriety of the conditional exercise of the power may be judicially determined.

Constitutional Provisions and Statutes Involved

The pertinent text of the constitutional provisions and statutes involved, being lengthy, is set forth in an Appendix hereto, pp. 33 *et seq., infra.* The pertinent citations are as follows:

1. U. S. Const., Art. 1, S.10, par. 1.

2. N. J. Const., Art. 8, sec. 2, pars. 1, 3. Pa. Const., Art. 3, secs. 17, 18; Art. 9, secs. 4, 6 (text not printed in appendix because question presented is not elaborated in this petition).

3. The original free bridge legislation of the two States: N. J., Laws 1912, p. 527, ch. 297; Laws 1919, p. 149, ch. 76, secs. 8, 10; Laws 1927, p. 77, ch. 36, sec. 1; Laws 1928, p. 389, ch. 217—presently codified in N.J.R.S. 32:9-1 to 16 and 32:11-1 *et seq.*, N.J.S.A. The Pennsylvania acts are Act of July 25, 1913, P.L. 1277 (No. 784), repealed and supplanted by Act of May 18, 1919, P.L. 148 (No. 102), secs. 7, 8; Act of May 10, 1927, P.L. 863 (No. 441)—presently codified in Pa. St., Title 36, ss. 3271 *et seq.*, 3391 *et seq.*

4. The 1934-1935 compact and state authorizing acts: 49 Stat. 1051, at 1058 *et seq.*, Act of August 30, 1935. N. J., Laws 1934, p. 498, Ch. 215, R.S. 32:8-1 *et seq.* Pa., Act of June 25, 1931, P.L. 1352 (No. 332); Act of August 5, 1932, P.L. 23 (No. 16); Act of May 18, 1933, P.L. 827 (No. 138).

5. The 1947 supplemental compact and state authorizing acts: 61 Stat. 752, Act of August 4, 1947; N. J., Laws 1947, p. 989, ch. 283, not printed in N.J.S.A.; Pa., Act of June 13, 1947, P.L. 592 (No. 256), 36 Pa. St., ss. 3401 *et seq.*

6. The 1951-1952 supplemental compact and state authorizing acts: 66 Stat. 28, Act of Mar. 31, 1952; N. J., Laws 1951, p. 1013, ch. 284, R.S. 32:8-11 *et seq.*, N.J.S.A., pocket part; Pa., Act of June 28, 1951, P.L. 906, 36 Pa. St. sec. 3401.

7. The state Acts declaring the free Delaware Bridge to be state property: Pa., Act of May 8, 1919, P.L. 148 (No. 102), Sec. 7; N. J., Laws 1953, p. 552, at p. 564, Ch. 31, R.S. 32:9-10, N.J.S.A., Pocket Part.

8. The New Jersey financing provisions for free bridge repair needs, apart from provisions in the compacts: N. J. Laws 1922, p. 193, Ch. 106, Sec. 1; Laws 1927, p. 77, Ch. 36, Sec. 1—Codified in R.S. 32:9-16. Also, N. J. Laws 1946, p. 998, Ch. 298, Sec. 1, R.S. 32:9-17, N.J.S.A., pocket part.

Statement

The petitioners are citizens and taxpayers of Pennsylvania who reside in the vicinity of the Delaware-Upper Mt. Bethel Township Bridge, a trans-Delaware River bridge between points in New Jersey and Pennsylvania (R. 4a, 5a). The said bridge (hereinafter sometimes referred to as the "Delaware Bridge") is a heavily-travelled (more than 2,000,000 vehicles per year) toll-free bridge owned jointly by the two States. The Delaware Bridge has been a publicly-owned free vehicular bridge maintained and operated by the Delaware River Joint Toll Bridge Commission (and by a predecessor joint bi-state bridge commission) since 1932, when the said bridge, theretofore a privately-owned toll bridge, was purchased from the private owners for $275,000 with public funds of the two States for the purpose of being rendered free of tolls

and of being opened to public traffic as a free bridge (R. 6a, 26a-28a, 32a).

The Delaware River Joint Toll Bridge Commission was created jointly by the Commonwealth of Pennsylvania and the State of New Jersey pursuant to bi-state companion statutes and congressionally approved interstate compacts. The Bridge Commission has jurisdiction over the free Delaware Bridge and other Delaware River free and toll bridges jointly owned by the two States (R. 4a-5a).

Late in 1953 the Bridge Commission announced that it would close the free Delaware Bridge on December 1, 1953, and would thereupon demolish it, because a new toll bridge about 2½ miles north of the free bridge had just been completed by the Bridge Commission for the asserted purpose of replacing the free bridge (R. 6a).

The present petitioners, being members of the very numerous body of persons who reside in the vicinity of the free bridge or have been users thereof, instituted a suit in the United States District Court for the District of New Jersey to attempt to save the bridge from destruction. The complaint in the said suit sought an injunction against the Bridge Commission to restrain it from closing or demolishing the free Delaware Bridge. The complaint (with amendments) alleged, in addition to facts essentially as set forth heretofore in this Statement, that the plaintiffs (the petitioners here) would be injured in their property rights by the closing and demolition of the free bridge, that the Bridge Commission was without lawful power to close or demolish the bridge, that it was under a duty to maintain the bridge as a free bridge, and that it had no power to covenant with purchasers of the new

toll-bridge bonds for the closing and demolition of the free bridge (R. 4a, 12a, 13a).

The Bridge Commission's answer in the District Court admitted that the Commission proposed to close and demolish the free Delaware Bridge, and asserted its lawful power to do so and to covenant therefor (R. 9a, 21a).

No factual issues were reached in the District Court because, in view of the public urgency of the matter and the need for an expeditious disposition (the complaint having been filed November 30, 1953, and the closing of the free bridge having been scheduled for the very next day), the parties agreed to proceed to a prompt hearing treating the matter as involving only issues of law (R. 1a, 26a). The essential legal issue was whether the Bridge Commission had lawful authority to close and demolish the free bridge, an issue whose determination depended upon the construction of applicable statutes and interstate compacts of New Jersey and Pennsylvania.

The District Court decided in favor of the Bridge Commission, reasoning that the applicable statutes and compacts evinced, after 1934-1935, a legislative policy to shift from a system of free bridges acquired and maintained with public funds, to a system for the construction of new, self-financing toll bridges, and to permit the elimination of the free bridges (whose perpetual maintenance had theretofore been statutorily ensured) as and when they became "replaced" with toll bridges. The District Court also ruled that the Bridge Commission's covenant with toll-bridge bondholders to destroy the free bridge was a contract whose obligation could not be constitutionally impaired. The judgment of the District Court was that the complaint should be dismissed (R. 24a *et seq.*, 58a).

The Court of Appeals affirmed the dismissal of the complaint, stating in its opinion (pp. 25 *et seq., infra*), that it agreed with the District Judge's conclusion "and the basis on which he reached it" (p. 27, *infra*). The Court of Appeals went on to take note of the plaintiffs-appellants' central contention, viz., that the overall legislative intent, as manifested in numerous enactments over the 40-years' period of this legislative evolution, looks to the continuing preservation of the free bridges in co-existence with newly constructed toll bridges. It rejected this view of the legislative policy on the basis of its general endorsement (above noted) of the District Court's reasoning, and on the basis of isolated excerpts which it cited from one of the later statutes (pp. 28-29, *infra*). In disposing of the plaintiffs-appellants' further contention that the legislation meticulously lays down a practicable financial method for effectuating the co-existence of the free and toll bridges by providing that the free bridge expenses be defrayed out of toll bridge moneys, the Court of Appeals said, "To this the Commission answers that its toll bridge business is precarious in some spots and excess money is not available for such use. We make the further answer that there is nothing we find in the legislation which will allow us or the plaintiffs to tell the Commission how to run its bridge building affairs" (p. 29, *infra*). In disposing of the plaintiffs-appellants' contention that the covenant with bondholders to destroy the free bridge was bad, the Court of Appeals stated that "We see no reason why, if the Commission could close the old bridge, it could not covenant to do so," and it reasoned on this point as follows: that the Bridge Commission's powers included the generic covenanting power

normally possessed by natural persons; that this would logically include a right to "agree to close the old facilities in order to get people to lend money to build new ones"; that the plaintiffs-appellants' attack on the pledge to destroy the free, state-owned bridge as amounting to a forbidden pledge of state property was "fanciful"; and that as to the plaintiffs-appellants' attack on the covenant as signifying that the Bridge Commission had covenanted away its discretion, "it appears that the conclusion to build a new bridge and to close this old bridge is all part of a rather comprehensive, thought-out piece of planning made after survey and full consideration by this Commission. It appears that the plans were considered, noted and settled by the Commission as part of a general improvement project before any covenant was made at all with the bondholders in the public offering" (pp. 30-32, *infra*). Finally, the Court of Appeals made no expression regarding the plaintiffs-appellants' demonstration to it that, very shortly after the commencement of the instant litigation, the New Jersey Legislature adopted a bill (later vetoed by the Governor, R. 1b) forbidding the closing or demolition of any free Delaware River bridge without prior legislative approval (R. 60a), and a concurrent resolution directing the State Attorney General to institute court proceedings to enjoin the closing and demolition of the instant free bridge (R. 62a). (The Pennsylvania Legislature, which meets triennially, was not in session during the period involved.)

Thus, on two decisive points in the case the Court of Appeals rested its rulings upon conclusions of a factual nature. These were (1) the court's acceptance of the Bridge Commission's factual argument alleging lack of

sufficient toll moneys, in answer to the plaintiffs-appellants' contention that as a matter of law the free bridge expenses were defrayable from toll bridge moneys; and (2) the court's reliance, in approving the covenant with bond purchasers, on an asserted factual history of planning and administrative determination by the Bridge Commission antecedent to the making of the covenant. These factual matters were wholly dehors the record (and indeed dehors the pleadings), the case from its outset in the District Court (see p. 7, *supra*) having been treated as involving only issues of law, and no evidence having been introduced by any party.

The present status of the free bridge is that it is closed but its demolition is stayed pending the conclusion of the instant litigation (R. 1a; p. 25, *infra*).

As to the basis for federal jurisdiction in the court of first instance below, both courts below expressly ruled that jurisdiction exists on the ground of diversity, deeming that any questions which might be thought to arise out of the dual state citizenship of the Bridge Commission were controlled by the decision in *Gavin* v. *Hudson and Manhattan Railroad Co.*, 185 F. 2d 104 (C. A. 3, 1950) (R. 34a-37a; p. 26, *infra*). In addition the Court of Appeals stated that "the decision will turn upon the interpretation of local statutes and the interstate compact" (p. 26, *infra*).

Reasons for Granting the Writ

I.

While the decision below would doom this publicly-owned free bridge which is used by more than 2,000,000

vehicles per year in crossing a major American interstate river boundary, only a very minor part of the real practical impact of this case is thereby suggested. The Bridge Commission has under its jurisdiction not one but *sixteen* of these publicly-owned free Delaware River bridges (R. 32a). If the free bridge involved in the present case be doomed, all of the remaining free Delaware River bridges controlled by the Bridge Commission would be jeopardized. If the Bridge Commission can destroy one free bridge on the assertion that it is being "replaced" with a toll bridge, the same fate can befall the fifteen other free bridges—and must inevitably befall some if not all of them as the Bridge Commission proceeds with its indicated toll bridge program for the Delaware River region.

The question of the Bridge Commission's power to destroy these free bridges under the provisions of the applicable bi-state enactments and congressionally-approved interstate compacts is thus presented upon the present petition in a practical framework of major and peculiarly compelling public importance. This Court has previously shown a ready disposition to bring into play its sparingly exercised certiorari-review powers where, as here, a question of interpretation of interstate compacts is presented in a way that vitally touches important public interests. Cf. *Delaware River Joint Toll Bridge Commission* v. *Colburn,* 310 U. S. 419, 427. Cf. also *West Virginia* v. *Sims,* 341 U. S. 22; *Hinderlider* v. *La Plata R. & Cherry Creek D. Co.,* 304 U. S. 92.

II.

The seeming unhesitancy with which the Court of Appeals adopted the view that the applicable statutes and

compacts indubitably allow the proposed destruction of the free bridge is difficult to reconcile with the impressive indications mentioned in the Statement, *supra*, to the effect that in the eyes of state legislators concerned and familiar with this important regional matter the Bridge Commission's proposal to destroy the free bridge, and its claim of power to do so, came as events which were altogether surprising because they had not been thought to be legislatively contemplated, except, apparently, among the enterprising administrative minds of the Bridge Commission's own membership and staff. The adoption by the New Jersey Legislature of the earlier mentioned bill and concurrent resolution aimed at saving the instant free bridge (R. 60a, 62a) was unavailingly called to the attention of the Court below as a powerful indication of the legislative intent not to countenance the destruction of such bridges. Even though it be conceded that such legislative pronouncements may not bindingly determine prior intent by retrospection, the adoption of the New Jersey bill and concurrent resolution in question in the present case is, it is submitted, entirely appropriate to be urged before this Court upon the present petition as constituting a persuasive reason for granting the writ; *i.e.*, in a case falling, to begin with, within that intrinsically important and review-worthy class of cases which involve questions as to interpretation of an interstate compact in a context of major practical concern to the public, the fact that one of the two state legislative bodies involved has so strikingly manifested a view opposed to the interpretation of the compact approved by the Court below (the other legislature being necessarily absent time-wise from this scene owing to its triennial sessional schedule, see p. 9, *supra*),

argues compellingly for the meritoriousness of a petition for review by this Court.

III.

The writ is merited because the correctness of the Court of Appeals' interpretation of the applicable bi-state statutes and interstate compacts is vigorously disputed on substantial grounds, and the important questions presented have not been but should be settled by this Court.

The applicable legislation falls into two main divisions, viz., the original free bridge legislation which commenced in 1912, and the compacts and supplemental compacts which commenced in 1934-1935 and introduced the toll bridge program. (Pertinent citations are given at appropriate places below.)

A. It is undisputed that the free Delaware River bridges of the class to which the instant bridge belongs were expressly and reiteratively required to be perpetually preserved as free bridges—*i.e.*, to be kept free of tolls, and to be maintained in repair—under the bi-state legislation commencing in 1912 which preceded the later interstate compact legislation commencing in the 1930's. The New Jersey free bridge preservation provisions are: Laws 1912, p. 527, ch. 297, Title of Act, sec. 8 (now codified as N.J.R.S. 32:9-12), sec. 10; Laws 1919, p. 149, ch. 76, sec. 8; Laws 1927, p. 77, ch. 36, sec. 1, now codified as N.J.R.S. 32:9-15. The companion Pennsylvania provisions are: Act of July 25, 1913, P.L. 1277, No. 784, secs. 13, 14; Act of May 8, 1919, P.L. 148, No. 102, secs. 7, 8.

B. It is likewise undisputed that the said free bridge preservation provisions have never been expressly re-

pealed. The interstate compact of 1934-1935, and the supplemental compacts adopted in 1947 and 1951-1952, as approved by the congressional enabling acts, contained no specific repealers of the provisions in question, and no general clauses for the repeal of prior inconsistent acts. 49 Stat. 1051, at 1058, Act of Aug. 30, 1935; 61 Stat. 752, Act of Aug. 4, 1947; 66 Stat. 28, Act of Mar. 31, 1952.

C. The essence of this case resides in the question of whether these free bridge preservation provisions, which have never been expressly repealed, have somehow been impliedly repealed by the statutes and compacts from 1934-1935 on, which established the bi-state toll bridge construction program. The Court of Appeals' resolution of this question was simplistic. Instead of dealing with the legislation as an entirety, instead of coming to grips with the numerous specific statutory indications (see below) that the overall legislative intent seems to point persistently to the concurrent existence of the free and toll bridges and to an integrated system for the financing of the free bridge needs out of the toll bridge funds, the Court of Appeals appears to have decided the case upon the simplistic view that the bi-state toll-bridge program initiated in the 1930's represented an unqualified policy determination that "New facilities were necessary but the legislatures felt that the new facilities would have to be paid for by the people who got the benefit of their use" (pp. 27-28, *infra*). Close examination of the legislation in its several applicable provisions does not support the view of the Court of Appeals that under the compacts of 1934-1935 and later years the free bridges were to give way as the toll bridges should come on the scene. The pertinent provisions being numerous, we shall below treat them,

for convenience, under three groupings, viz., provisions indicating intent (1) to keep the free bridges free of tolls, (2) to continue in force the requirement as to good maintenance of the free bridges, and (3) to enable accomplishment of the latter objectives by providing an effective financial machinery therefor.

First, then, as to the indications in the compacts of intent to keep the free bridges free:

(1) The titles and preamble "Whereas" clauses of the state acts authorizing the 1934-1935 compact support the view that the newly-provided-for tolls were to be charged only on bridges "additional" to those already existing—all of which latter were free bridges. (N. J., Laws, 1934, p. 498, Ch. 215, Title of Act; Pa., Act of June 25, 1931, P.L. 1352 (No. 332), Title of Act; the "Whereas" clauses appear in the compact as approved by Congress at 49 Stat. 1051, 1058 *et seq.*, Act of August 30, 1935, and in N.J.R.S. 32:8-1, and 36 Pa. St. s. 3401.) See also the concluding sentence of the New Jersey Act of 1934 authorizing the 1934-1935 compact (Laws 1934, p. 498, at p. 510, Ch. 215, Sec. 4; R.S. 32:8-15).

(2) The 1947 Supplemental Compact expressly reaverred the long-standing prohibition against charging tolls on the existing free bridges. See Art. X, par. (i) in 61 Stat. 752, 755, Act of Aug. 4, 1947.

It is thus evident that, continuously from 1912 down through the most recent legislation, the legislative prohibition against charging tolls on the existing free bridges has stood unrelaxed. The court below took the view that the substituting of a toll bridge for a free bridge is not

a circumvention of the law because the law no longer requires the free bridges to be perpetually preserved.

Second, then, as to the indications in the compacts of intent to continue in force the requirement as to preserving the free bridges in a state of good maintenance and repair:

(1) The compact of 1934-1935, in its enumeration of the duties of the newly created "Delaware River Joint Toll Bridge Commission," included the duty of continuing "maintenance" of the free bridges. 49 Stat. 1051, at 1058 *et seq.,* Act of August 30, 1935, Art. I, par. (a), at p. 1059. Also, paragraph (o) of Article II (at p. 1060), conferring on the present Bridge Commission functions of predecessor commissions, expressly speaks of "powers" and "duties" as to "maintenance" of the free bridges.

(2) Under bi-state legislation of 1927-1928 it was provided that, beyond mere maintenance and repair of the free bridges, new free bridges might be constructed with state funds to be appropriated. This legislation is still in force. N. J., Laws 1928, Ch. 217, R.S. 32:11-1, *et seq.;* Pa., Act of May 10, 1927, P.L. 863 (No. 441), 36 Pa. St., SS. 3391 *et seq.* The 1927-1928 legislation was moreover integrated into the 1934-1935 compact. Art. II, par. (o). Today the Bridge Commission continues free to request state appropriations under the 1927-1928 legislation; and as we show below (pp. 17-21, *infra*) the supplemental compacts of 1947 and 1951-1952 appear to have opened still further alternatives for the construction of new free bridges without dependency on appropriation of state funds.

(3) Another strong indication in the compacts of intent to continue the requirement as to maintenance and preservation of the free bridges is that the 1947 supplemental compact (61 Stat. 752, Act of Aug. 4, 1947) contained express provisions preserving intact all powers theretofore granted to the Bridge Commission, including, in a form even more specific than had been done in the 1934-1935 compact, powers relating to the maintenance, repair, improvement, rehabilitation and construction of the free bridges. See the new subdivision (a) which was incorporated in the (1947) amended Article X of the compact.

Third, we next turn to the provisions in the compacts which show that a financial machinery exists whereby the expenses of the continuing free bridge program may be met from the toll bridge funds.*

We previously pointed out (p. 15) that the 1934-1935 compact, in authorizing bridge tolls, confined the said authorization to bridges "additional" to those already existing, the bridges already in existence being the free bridges. It will be recalled also that the 1934-1935 compact preserved intact the 1927-1928 new free bridge construction provisions, and contained general reaffirmations of the free-bridge policy (p. 16, *supra*).

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* In 1922 (N. J. Laws 1922, p. 193, Ch. 106, Sec. 1) New Jersey established on a regular statutory basis its financial contributions for free bridge "maintenance and repair", directing that such sums be paid out of receipts of the motor vehicle department. This system was reaffirmed in 1927 (Laws 1927, p. 77, Ch. 36, Sec. 1). It is still in force, N.J.R.S. 32:9-16. See also N. J. Laws 1946, p. 998, Ch. 298, Sec. 1 (R.S. 32:9-17, N.J.S.A., pocket part), making financial provision for bridge maintenance long after (in 1946) the toll bridge system of the 1930's had been launched. The purpose of the material now to be presented in the text is to show that the compacts established a flexible financial machinery for free bridge needs beyond the provisions mentioned in this footnote.

From this, it is evident that two classes of new bridges were authorized to be constructed under the 1934-1935 compact, namely (1) new bridges which should be free bridges, *i.e.*, because they would be built for the purpose of replacing priorly-existing free bridges whose perpetual free status the law commanded to be preserved; and (2) new bridges which should be toll bridges, *i.e.*, because they would be "additional" to the priorly-existing free bridges and to the replacements thereof. From this, in turn, it becomes evident that, absent direct appropriations from the State treasuries to pay the costs of constructing the new *free* bridges (or to pay the free bridge maintenance and repair costs or the costs of any of the other non-self-sustaining activities of the Bridge Commission), the source of funds to pay such costs must necessarily be (1) the revenues from those of the new bridges authorized to be built which were permitted to be made toll bridges because they would be "additional" to the existing free bridges and to their new-free-bridge replacements; or (2) the proceeds of bonds or other loans based on such toll bridge revenues. The legislation shows that this was precisely the arrangement adopted.

As to the 1934-1935 compact: Article V, after authorizing the Bridge Commission to collect tolls in "connection with any such bridge" (*i.e.*, "such bridge" referring to the "additional" bridge or bridges previously noted as being "additional" to the free bridges which might be constructed), expressly authorizes the Commission to pledge the toll bridge revenues, without any restriction or limitation whatsoever, as security for any other borrowings "for any of its authorized purposes." *This surely suggests that the toll bridge revenues are available as*

security for the financing of any rehabilitation or new construction of free bridges. (Article VII contains a similar provision.)

Next, as to the 1947 Supplemental Compact: The pertinent financing provisions are paragraphs (h) and (i) of the amended Article X. The following points are to be noted regarding the last-mentioned provisions:

(1) The "Bridge revenue bonds" therein referred to may be issued not merely for the "acquisition" and "construction" of bridges, but also for their "rehabilitation or improvement." Obviously the only "bridge *revenue* bonds" which could be issued for "rehabilitation or improvement" of a free bridge would be bonds to which the revenues of toll bridges were pledged. But no existing free bridge could be subjected to toll charges merely because it was "improved" or "rehabilitated." An express proviso in par. (i) of Article X precludes that. Likewise, the last "Whereas" clause in the 1947 preamble expressly declared that toll charges were to be placed on "new" bridges; it did not say they were to be placed on "improved" or "rehabilitated" bridges.

(2) There is nothing in the abovementioned paragraphs (h) and (i) of Article X which justifies the conclusion that tolls might be charged for, or bridge revenue bonds made to look to revenues from, any new bridge "construction" which is a free bridge replacement, any more than (as just seen) such tolls could be placed on an "improved" or "rehabilitated" free bridge. The unvarying distinction observed in all of the bi-state compact legislation from 1934-1935 on, as between the construction of new replacement free bridges (which must remain toll-free) and the construction of "additional" bridges (which latter

might be subjected to tolls), points to the conclusion that, unless the 1947 legislation can be shown to have obliterated this distinction by unambiguous and explicit language, the distinction must be deemed to have been continued. There is no such explicit or unambiguous indication in the 1947 legislation. The only language in the 1947 legislation which even remotely suggests any such intent is the last "Whereas" clause of the preamble—there being nothing comparable in the body of the compact itself—where the power to impose tolls is stated to be "necessary" "for the use of any such new bridge or bridges;" but even in this last-mentioned "Whereas" clause the distinction is expressly preserved as between replacements of existing bridges and "acquiring or constructing additional bridges," so that the aforementioned statement of the necessity for tolls on "any such new bridge or bridges" is wholly reconcilable with the charging of such tolls only on new bridges which are "additional" to the free bridges or to their replacements.

Next, as to the Supplemental Compact of 1951-1952: Here (66 Stat. 28, Act of March 31, 1952) the Bridge Commission's power to administer its overall revenues from authorized toll bridges to include the defraying of the costs of the free bridge facilities reached its climax. The 1951-1952 supplement contained an important addition to par. (a) of Article X of the compact for the combining or integrating of all bridge construction projects for financing purposes. There was thus brought to logical fulfillment the process begun in 1934-1935; and the earlier provisions touching this subject were thus significantly further strengthened to allow unimpeded integration of the Commission's bridge financing.

The Court of Appeals' opinion is barren of any mention of the foregoing free-bridge financing provisions in the compacts. That Court's only notice of this aspect of the case was in its seeming acceptance of the Bridge Commission's unproven and outside-the-record statement that no excess toll bridge money was available; and in its unelaborated remark that it could not "tell the Commission how to run its bridge-building affairs" p. 7, *infra*).

IV.

The question of the correctness of the ruling below upholding the Bridge Commission's power to covenant with bondholders for the destruction of the free bridge merits consideration and review by this Court. The covenant question does not lose its vitality in the case by reason of any assertion that it is merged in the question of the Bridge Commission's power, as such, to close and demolish the bridge. The New Jersey gubernatorial veto (R. 1b) of the bill which would have prevented this destruction (R. 60a) rested chiefly on the ground that the covenant was a contract whose obligation could not be constitutionally impaired. Also, the existence of the covenant is or may be in itself a barrier preventing the Bridge Commission from reconsidering its own exercise of discretion in this case.*

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* The pinch exerted by the covenant is strikingly evident, for example, in the fact that it thwarts any attempt to utilize the leasing provisions of the second sentence of paragraph (a) of Article X of the Compact as amended in the 1951-1952 Supplement (66 Stat. 28, Act of March 31, 1952), whereby some interested public body or agency might quite conceivably take over the operation of this free bridge as lessees and thereby preserve it from destruction. The said leasing provision, incidentally, helps to negative any contention that the instant bridge legislation as a whole affords no effective or realistic method by which a free bridge may be perpetually preserved.

The validity of the covenant is seriously questionable. Nowhere in the applicable legislation is power conferred on the Bridge Commission expressly or impliedly to pledge destruction of a free bridge, and there are powerful legislative indications to the contrary. Article IV of the 1934-1935 compact expressly prohibits the pledging of the public credit or the creation of any debt chargeable to the public. Moreover, the legislation specifically states what the Bridge Commission may pledge, to wit, toll revenues. See the 1934-1935 compact, Article I, Par. (c), Articles V and VII; and the 1947 compact, Article X, Par. (i).

It is fundamental that delegates, in issuing public bonds or other obligations under statutory authority, may not pledge security beyond that permitted by the statute, and are required in general to observe strictly the statutory provisions. *Matthews* v. *Bailey,* 198 Ark. 703, 130 S. W. 2d 1006 (1939); *Almond* v. *Gilmer,* 188 Va. 822, 51 S. E. 2d 272, 278 (1949); *State* v. *Florida State Improvement Commission,* 160 Fla. 230, 34 So. 2d 443, 450 (1948); *State Highway Commission of Kentucky* v. *King,* 259 Ky. 414, 82 S. W. 2d 443 (1935).

The free Delaware Bridge is state property. Pa., Act of May 8, 1919, P.L. 148 (No. 102), Sec. 7; N. J., Laws 1953, Ch. 31, p. 552 at p. 564, R.S. 32:9-10, N.J.S.A., Pocket Part. A claim of delegated authority to make a pledge to destroy such a valuable public property, being plainly to the detriment and injury of the state, will not be recognized "without clear delegation of such authority". Cf. *State* v. *Erie R. Co.,* 42 A. 2d 759, 23 N. J. Misc. 203, 212 (Sup. Ct. 1945). Few governmental restrictions are more rigidly formulated or sternly enforced than that body of restric-

tions which circumscribes the authority of public officers to deal with or to dispose of public property. E.g., *In re Opinion to the Governor,* 54 R. I. 45, 169 Atl. 748 (1933).

How much worse than an *ordinary* pledge or hypothecation (where the property at least remains physically extant if not in all respects valuationally intact), is that extraordinary species of pledge which we see in the present case, a pledge to *destroy* property of the state—and it is not an insignificant property, not a case of *de minimis,* but a property valued in the many hundreds of thousands of dollars which is to be destroyed *per* pledge.

V.

The granting of the writ in the present case would serve also the ends of orderly judicial procedure. The resort below to factual matters *dehors* the record (pp. 9-10, *supra*) worked serious injustice and may well have been dispositive. The Court of Appeals' acceptance of the Bridge Commission's unproven assertion that it had no excess toll bridge funds to use in meeting the needs of the free bridge program amounted to a procedural and probative *fait accompli.* For, if our contention is correct that the applicable legislation contemplates an integrated financing of the toll bridge and free bridge needs, then the question whether the Bridge Commission has reasonably executed its delegated powers in administering those integrated financing arrangements in the present case is a question that can be properly determined only by a judicial hearing on the issues of fact involved.

Equally troublesome questions are presented by the action of the Court of Appeals in adducing facts outside

the record relating to the Bridge Commission's asserted planning and survey activities prior to the making of the covenant. If there is merit in our contention that the covenant is fatally defective because it improperly binds and stultifies the Bridge Commission's responsible exercise of an independent discretion, then the question of whether there was in fact a proper exercise of official discretion prior to the making of the covenant is a question which the plaintiffs-appellants below were entitled to have judicially tried.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

ISADORE GLAUBERMAN,
Attorney for Petitioners.

Opinion of the Court of Appeals

Argued October 13, 1954

Before GOODRICH, KALODNER and HASTIE, *Circuit Judges.*

OPINION OF THE COURT

(Filed November 17, 1954)

By GOODRICH, *Circuit Judge.*

By this suit the plaintiffs, citizens of Pennsylvania, seek to enjoin the defendant, the Delaware River Joint Toll Bridge Commission (Commission), from closing and demolishing a bridge called the Delaware-Upper Mt. Bethel Township Bridge which crosses from Pennsylvania to New Jersey. This bridge is known locally as the "Delaware" bridge. The district court refused the injunction and entered judgment dismissing plaintiffs' complaint. 120 F. Supp. 337 (D. N.J. 1954). Subsequently, the district court denied an application to stay the closing of the old bridge but granted a stay of demolition pending appeal to this court.

The defendant Commission was created by the action of the Pennsylvania and New Jersey legislatures.[1] Its powers and duties are defined in an interstate compact entered into by the Governors of each state pursuant to this legis-

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[1] Pa. Stat. Ann. tit. 36, §3401 (Purdon 1942); N. J. Stat. Ann. §32:8-1 to 32:8-15 (1940).

This Commission is the successor to a "Joint Commission" which was established in 1912 and continued in existence until replaced in 1934. See Pa. Stat. Ann. tit. 36, §3271 *et seq.* (Purdon 1942) (Pa. Act of July 25, 1913, P.L. 1277 as amended); N. J. Stat. Ann. §32:9-1 to 32:9-16 (1940).

lation and approved by the Congress of the United States.[2] This compact was first entered into in 1934 and it was amended in 1947.

The first question is whether the federal court for the district of New Jersey had jurisdiction. The district court thought it had, basing its conclusion upon our decision in Gavin v. Hudson & Manhattan R. Co., 185 F. 2d 104 (C.A. 3, 1950). The case is obviously in point and was controlling unless a distinction is to be made between the type of corporation here involved and the railroad involved in the Gavin case. We do not see any reason for making such a distinction especially since the Commission "may sue and be sued."[3] The court, therefore, had jurisdiction by reason of diversity and we do not need to inquire whether there were other grounds or not. In any event, the decision will turn upon interpretation of local statutes and the interstate compact. There is virtually no case law helpful upon the question and we have to reach our conclusion from examination of the legislation as best we can.[4]

Jurisdiction being settled, the next question is whether the plaintiffs have legal basis on which to base their argu-

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[2] 49 Stat. 1051, at 1058 (1935).

[3] Pa. Stat. Ann. tit. 36, §3401, Art. II, (b) (Purdon 1942); N. J. Stat. Ann. §32:8-3, Art. II, (b) (1940).

[4] We are aware of Delaware River Joint Toll Bridge Commission v. Colburn, 310 U. S. 419 (1940). That case involved the question of liability of the Commission for depriving property owners of light, air and view caused by the erection of a bridge approach. In reversing the state court decision holding the Commission liable, the Supreme Court ruled that the provisions of the Act of 1912 providing for such damages were not to be read into the 1934 compact even though the compact adopted the eminent domain procedures of the 1912 Act. This case does not materially aid us in solving the problem with which we are faced.

ment against the exercising of the Commission's authority to close this bridge. This point was considered in through detail by Judge Forman before whom the case was tried in the district court of New Jersey. His opinion, cited above, covers almost every argument which was made in this court. We agree with the conclusion Judge Forman reached and the basis on which he reached it. We could almost stop here for there really is little to add. But the case has been pressed with earnestness and since some points were stressed more strongly here we shall briefly indicate why we think the district judge was right and dispose of these other points.

The plaintiffs, through their counsel, go back into legislation as far as 1912. They treat of the legislation there and again the legislation in 1919 and the late Twenties. They step from there to the acts creating this Commission, already mentioned, and draw certain conclusions. These conclusions are that the policy shown in the earlier statutes continues somehow to pervade what we may call the toll bridge field. Plaintiffs find in these earlier statutes a state declared policy to provide free bridges across the Delaware River. Undoubtedly, at the beginning this was so. The defendant's predecessor did buy privately owned toll bridges and did open them free to the public.

It is equally clear, however, that the legislation which came in the Thirties showed a distinct change of policy by the legislatures of the states which created the Commission and, as we know from common knowledge, throughout the country generally. Times were harder. Traffic was increasing. New facilities were necessary but the legisla-

tures felt that the new facilities would have to be paid for by the people who got the benefit of their use. That is what the 1934 legislation provided for and that is made even clearer by the supplemental compact of 1947[5] which in turn was approved by the Congress of the United States.[6]

We think that the language of the preamble to this supplemental compact plus the amendment of Article X of the original compact show so clearly as to leave no question that the Commission is within its authority in doing what it proposes to do here. Here is the language from the preamble to the supplemental compact:

> "Whereas, Because of the great increase in traffic and loads over said bridges since their construction, many of said bridges are now inadequate or unsafe, and it will be necessary to rehabilitate or replace some or all of said bridges with new bridges at the same or different locations in order to provide safe, adequate and convenient facilities for traffic crossing the Delaware river; and
>
> "Whereas, It is necessary that the commission have power to issue and sell its bridge revenue bonds for rehabilitating or replacing existing bridges with new bridges at the same or different locations, for acquiring or constructing additional bridges, and for refunding any bridge revenue bonds of the commission, and that the commission also have power to fix, charge and collect tolls, rates, rents and other charges for the use of any such new bridge or bridges . . . "

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[5] Pa. Stat. Ann. tit. 36, §3401 (Purdon Supp. 1953); N. J. Stat. Ann. §32:8 to 32:11 (Cum. Supp. 1953).

[6] 61 Stat. 752 (1947).

And here is the language of the amended Article X of the compact:

> "(b) The commission may replace any one or more existing bridges across the Delaware river between the Commonwealth of Pennsylvania and the State of New Jersey north of said line with one or more new bridges at such locations as the commission may determine to be adequate and convenient for the traffic to be served thereby.
>
> ". . .
>
> "(e) The commission may demolish and remove any bridge now operated by it, when such bridge has been or is being replaced by a new bridge at the same or a different location, which in the determination of the commission will serve substantially the same traffic as that served by such existing bridge, and the commission may sell or otherwise dispose of any ferry or other property of the commission deemed by it to be no longer useful or needed for the purposes of the commission."

The plaintiffs say that if the Commission can close this Delaware bridge then it must provide another free bridge to take its place. They say that while the Commission does not have power of taxation it can use the toll it gets from other bridges to pay for the free one which these plaintiffs want. To this the Commission answers that its toll bridge business is precarious in some spots and excess money is not available for such use. We make the further answer that there is nothing we find in the legislation which will allow us or the plaintiffs to tell the Commission how to run its bridge-building affairs.

The thing which irks the plaintiffs is not only the closing of this Delaware bridge but the fact that a new bridge, fit to handle the present-day flow of traffic, has been opened about two and a half miles north of the old bridge. Improved facilities are present, but individual users have to pay for them.

The particular point on which the plaintiffs attack the Commission with regard to the new bridge is a covenant contained in the bonds issued by the Commission to finance the new structure. By this covenant the Commission obligated itself to close the Delaware bridge. The plaintiffs say that entering into this covenant was beyond the power of the Commission. They claim that in so doing the Commission has prevented itself from exercising that discretion which it is lawully bound to exercise. They claim further that this constitutes a pledge of state property. The Commission is not authorized to pledge state property.[7]

This argument was evidently not pressed as a main point in the district court at the final hearing. Judge Forman, near the end of his opinion, added that the adoption of plaintiffs' contentions at this late date would "unjustifiably impair the obligation of the Commission's covenant to close and demolish the bridge." Taking their cue from this language plaintiffs have presented in full to this court the argument stated above.

We do not think this argument is any better than the main proposition. The argument that what the Commis-

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[7] Pa. Stat. Ann. tit. 36, §3401, Art. IV (Purdon 1942); N. J. Stat. Ann. §32:8-5 (1940).

sion has done is to pledge state property is so attenuated and fanciful that it does not require any answer except to say that there is nothing in it.

With regard to the covenant, two things may be said. Article II, (p) of the interstate compact says that the Commission is authorized to exercise "any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs." The Commission is also given express authority "To enter into contracts." Article II, (h). We think it is quite clear that a private person or business corporation could make an agreement to close one place where business was being done by it when it was trying to borrow money to finance a new building. So here we think this Commission could agree to close the old facilities in order to get people to lend money to build new ones.

Further, it appears that the conclusion to build a new bridge and to close this old bridge is all part of a rather comprehensive, thought-out piece of planning made after survey and full consideration by this Commission. It appears that the plans were considered, voted and settled by the Commission as part of a general improvement project before any covenant was made at all with the bondholders in the public offering. The Commission did not covenant away its discretion; it had exercised its discretion.[8] Then, to make effective its exercise of discretion it issued these bonds with assurance to purchasers that the toll bridge

[8] An examination of the Annual Reports of this Commission for the years 1950 and 1951 indicates it had decided to replace and close this bridge before the bids on the bond issue were received in September 1951.

would not be competing with a free bridge next to the one on which their money was being spent. We see no reason why, if the Commission could close the old bridge, it could not covenant to do so. But more than that we think the closing of the old bridge was part of the plan adopted before any covenant was made.

It can be readily acknowledged that these plaintiffs and others are subjected to inconvenience by having their free facilities replaced by substitutes for which they must pay or else travel some distance to get another free facility. If traffic had not mushroomed so in this motor age each of the complaining citizens would still be able to use this old bridge. But in the process of developing new facilities these citizens suffer the inconveniences inherent in the changes necessary to cope with the problem of modern-day traffic. This is no more than the inconvenience suffered by many of us in the changes brought about by this same problem.

The judgment of the district court will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

APPENDIX OF CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(1) United States Constitution, Article 1, S. 10, par. 1:

"Section 10. No State shall * * * pass any * * * Law impairing the Obligation of Contracts, * * *."

(2) The original 1912-1913 free bridge legislation—the New Jersey statute (Laws 1912, p. 527, ch. 297) is given below; the companion Pennsylvania act (cited at p. 4, *supra*) is substantially similar and is not printed herein:

An Act authorizing the acquisition and maintaining by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware river, and providing for free travel across the same.

WHEREAS, Toll bridges have been constructed and are now maintained at various places across the Delaware river between the State of New Jersey on one side and the State of Pennsylvania on the other by companies incorporated under and by virtue of the laws of the States of New Jersey and Pennsylvania, which toll bridges are necessary for the accommodation of the public, the carrying on of business and for social intercourse; and

WHEREAS, By reason of the constant increase in the population in the border counties of said States and the constant increase in traffic upon and across said bridges, the payment of toll has become a serious burden and tax upon the people of both said States, and operates to their detriment; therefore

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. Three persons shall be appointed by the Governor to be constituted a commission together with a like board

or commission from the State of Pennsylvania to acquire the rights, franchises and property of the several bridge companies owning and operating toll bridges across said Delaware river between the State of New Jersey and the State of Pennsylvania, except such as are owned by steam or electric railways or railroads and used for railway or railroad purposes, such acquisition to be either by purchase or to be had and effected by the State of New Jersey under and by virtue of its rights of eminent domain as set forth in sections two and three of this act. The State of New Jersey to pay one-half of the cost of said properties and one-half the cost of acquiring the same, the other half to be paid by the State of Pennsylvania.

2. In case the compensation accruing from such appropriation has not been agreed upon the Court of Common Pleas of the county in which the bridges, or any of them so taken shall be situated, or any law judge thereof in vacation, without any bond being required to be filed, on application thereto, by the Attorney-General of the State, or any corporation, stock company, partnership or persons interested, shall appoint three discreet and disinterested freeholders as viewers, and appoint a time not less than twenty nor more than thirty days therefrom, when said viewers shall meet upon the property and view the same, and the premises affected thereby; the said viewers shall give at least ten days' personal notice of the time and place of the first meeting to the Attorney-General, and to the president, secretary or director of any corporation stock company or partnership affected, if any of the aforesaid officers reside in the county in which said bridges are located, otherwise by advertisement for three consecutive weeks in two newspapers published in said county, and by hand-bills posted upon the premises or by such notice as the court shall direct.

3. The said viewers having been duly sworn or affirmed faithfully, justly and impartially, to decide and true report to make concerning the value of the property and franchises so taken, which shall be submitted to them and in relation to which they are authorized to inquire under the provisions of this act, and having viewed the premises or examined the property, shall hear all parties interested, and their witnesses, and shall estimate the damages for property taken, injured or destroyed with all the rights and franchises appertaining to the same, and to whom the damages are payable. They shall give at least ten days' notice thereof, in the manner herein provided to the Attorney-General and to all parties interested of the time and place when said viewers will meet and exhibit said report and hear all exceptions thereto.

4. After making whatever changes are deemed necessary the said viewers shall make a report to the court showing the damages, and file therewith a plan showing the location of said bridge or bridges so taken, and the names of the corporation stock company, partnership or persons to whom such damages are payable.

5. Upon the report of said viewers, or any two of them, being filed in said court, either the State of New Jersey, the corporation stock company, partnership or persons owning said bridge or bridges, or any party interested may, within thirty days thereafter, file exceptions to the same, and the court shall have power to confirm said report or to modify, change or otherwise correct the same, or refer the same back to the same or new viewers with like power as to their report, or within thirty days from the filing of any report in court or the final action of the court upon the exceptions of any corporation whose property is taken, or the State of New Jersey may appeal and demand a trial by jury, and any corporation stock com-

pany, partnership, person or party interested therein, or the State of New Jersey may, within thirty days after final decree, take an appeal to the Supreme Court. If no exceptions are filed and demands made for trial by jury within the said thirty days after the filing of said report, the same shall become absolute.

6. The said Court of Common Pleas shall have power to order what notices shall be given in connection with any part of said proceedings and may make all such orders as it may deem requisite.

7. The costs of the viewers and all court costs, including advertisements incurred in the proceedings aforesaid, shall be defrayed by the State of New Jersey, and each of the said viewers shall be entitled to a sum not exceding five dollars a day for every day necessarily employed in the performance of the duties herein prescribed.

8. Upon and immediately after the enactment of the concurrent legislation by the State of Pennsylvania, said bridges shall become the sole property of the said States of New Jersey and Pennsylvania in proportion aforesaid, and the toll charges thereon shall cease and said bridges shall be free to the traveling public under such rules and regulations as may be prescribed by the said States; provided, that if the said commission and the corporation stock company, partnership or person owning any of the said bridges fail to come to an agreement as to the compensation for the taking of the same within sixty days of the enactment of said concurrent legislation, the jury of view shall be appointed as aforesaid and damages assessed as of the date upon which the collection of tolls ceased, with interest thereon during the time an appeal from the assessment thereof is pending; *and provided further,* that any steam or passenger railroad or railway now having in use and occupation any such toll bridge under a lease or

agreement with any corporation stock company, partnership or person owning said bridge, shall pay to the States of New Jersey and Pennsylvania the same rental, interest and charges and in the same manner and proportions as they now pay to the said bridge corporation or corporation companies or owners as aforesaid.

9. All bridge properties or interest therein acquired by the States of New Jersey and Pennsylvania in the manner and form above prescribed, and all damages and costs arising from the taking of the same as aforesaid, shall be paid by the two States to the corporation stock companies, partnership or persons as their interests may appear in equal proportions as the interests of said States may appear.

10. Upon the acquisition as aforesaid by the State of New Jersey jointly with the State of Pennsylvania according as such bridges have a terminus in the said States, respectively, of the bridge properties as hereinbefore provided, such bridges shall be and remain in the charge and custody of any board or official that the respective Governors of said States may designate and such bridges and the immediate approaches thereto shall be maintained jointly by said State of New Jersey and said State of Pennsylvania in which each of these bridges has its terminus in equal proportions, and shall be kept in constant repair and rebuilt when destroyed, and the expenses incident to the maintenance of said bridge property in the charge and custody of said board shall be borne equally by said States; *provided,* that appropriate concurrent legislation for the same purpose be enacted by the State of Pennsylvania.

11. Not more than five hundred thousand dollars shall be paid by the State of New Jersey for and on account of its portion or share for the purchase or condemnation of said bridges; *provided,* that not more than one hundred thousand dollars thereof shall be expended for the said

purpose each year, and the aforesaid amount or so much thereof as may be necessary is hereby specifically appropriated in the proportions aforesaid out of any moneys in the treasury not otherwise appropriated.

Approved April 1, 1912.

(3) The 1919 New Jersey amendment to the 1912 free bridge act, Laws 1919, p. 149, at 152-153, ch. 76, Secs. 8, 10:

* * * * *

8. Section eight of the act of which this act is amendatory be and the same is hereby amended so that the same shall read as follows:

> 8. Immediately upon the acquisition and entry and taking possession of said bridge properties by the joint commission the toll charges thereon shall cease and said bridges shall be free to the travelling public under such laws of the respective States and rules and regulations of the joint commission as may be prescribed. * * *.

* * * * *

10. Upon the acquisition as aforesaid by the State of New Jersey jointly with the State of Pennsylvania according as such bridges have a terminus in the said States, respectively, of the bridge properties as hereinbefore provided, such bridges shall be and remain in the charge and custody of any board or official that the respective Governors of said States may designate, and such bridges and the immediate approaches thereto shall be maintained jointly by said State of New Jersey and said State of Pennsylvania in which each of these bridges has its terminus in equal proportions, and shall be maintained and kept in constant repair and the expenses incident to the

maintenance of said bridge property in the charge and custody of said board shall be borne equally by said States; *provided,* that appropriate concurent legislation for the same purpose be enacted by the State of Pennsylvania.

(4) The 1927 New Jersey amendment to the 1912 free bridge act, Laws 1927, p. 77, Ch. 36, sec. 1, R.S. 32:9-15:

1. Section ten of the act of which this act is amendatory be and the same is hereby amended to read as follows:

> 10. * * *, and such bridges and the immediate approaches thereto shall be maintained jointly by said State of New Jersey and said State of Pennsylvania in which each of these bridges has its terminus in equal proportions, and shall be rebuilt, constructed, reconstructed and maintained and kept in constant repair and rebuilt when destroyed, and the expenses incident to the rebuilding, construction, reconstruction, maintenance and repair of said bridge properties in charge and custody of said board shall be borne equally by said States; *provided,* that appropriate concurrent legislation for the same purpose be enacted by the State of Pennsylvania. * * *.

(5) The 1927-1928 legislation for construction of new free bridges—the New Jersey statute (Laws 1928, p. 389, ch. 217, R.S. 32:11-1 *et seq.*) is given below; the companion Pennsylvania Act (cited at p. 4, *supra*) is substantially similar and is not printed herein:

An Act authorizing the commission appointed pursuant to an act entitled "An act authorizing the acquisition and maintaining by the State of New Jersey, in con-

junction with the State of Pennsylvania, of toll bridges across the Delaware river, and providing for free travel across the same," approved April first, one thousand nine hundred and twelve, and constituting Chapter two hundred and ninety-seven of the Laws of that year, to provide for the construction and maintenance of free bridges across the Delaware river between the Commonwealth of Pennsylvania and this State.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. The commission created by the act entitled "An act authorizing the acquisition and maintenance by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware river, and providing for free travel across the same," approved April first, one thousand nine hundred and twelve, is hereby authorized to provide for the construction and maintenance of free bridges across the Delaware river between the Commonwealth of Pennsylvania and this State, and for that purpose to act in conjunction with a similar commission appointed for that purpose by the said Commonwealth of Pennsylvania, which commission of said Commonwealth of Pennsylvania and said State of New Jersey shall be known as the "Joint Commission" of said two States, whenever referred to in this act.

2. The said "Joint Commission" is hereby authorized and empowered to appoint a treasurer, who may or may not be a member of the said commission, a secretary, and such engineering, architectural, and construction experts, inspectors, and other employees, as in the opinion of the "Joint Commission" may be necessary, all of whom shall do such work as the "Joint Commission" shall direct. The "Joint Commission" shall fix the compensation of the respective persons so appointed.

3. The said "Joint Commission" is hereby authorized and empowered to have prepared the necessary and proper plans and specifications for the construction of any bridge across the Delaware river as shall be decided upon, and to select the location for the same, determine the size, type, and method of construction thereof; to plan and fix its boundaries and the approaches thereto and to make all necessary estimates of the probable cost of its construction and the acquisition of ground for its site and approaches; to proceed to acquire the ground for the sites of the abutments and the approaches to such bridge in the manner hereinafter provided; to enter into necessary contracts to build and equip any such bridge and the approaches thereto; to obtain such consent as may be necessary of the Government of the United States and the approval of the Secretary of War; and to cause a survey and map to be made of all lands, structures, rights of way, franchises, easements, and other interests in land lying within the Commonwealth, including lands under water and riparian land owned by any person, corporation, or municipality, the acquisition of which may be deemed necessary for the construction of such bridge and to cause such maps and surveys to be filed in its office.

4. The commission appointed under the provisions of the act to which this act is a supplement, may acquire any land, or interest in land, necessary for the construction of any such bridge, in accordance with the provisions of an act entitled "An act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of 1900)," approved March twentieth, one thousand nine hundred, and the acts amendatory thereof and supplemental thereto.

5. The commission appointed under the provisions of the act to which this act is a supplement shall not proceed to exercise or carry out any authority or power herein

given to bind this State, beyond the extent to which this State shall have appropriated or made available, moneys for said purpose, which moneys, when appropriated, may be withdrawn from the treasury of this State by the commission created by the act to which this act is a supplement, in such manner as shall be approved by the Comptroller of the Treasury.

6. The commission appointed under the act to which this act is a supplement shall not proceed to exercise or carry out any authority or power herein conferred until the Commonwealth of Pennsylvania has, or shall, by appropriate legislation, fix and vest like powers in said "Joint Commission" and make an appropriation equal to the appropriation made, or to be made, by this State, for the purpose of providing for the cost of acquiring land for the approaches to and erection and construction of the approaches and the construction of any bridge hereunder.

7. All contracts or contract let by the "Joint Commission" shall provide for payments as the work advances, but the total payments to the contractor or contractors at any time before the final completion and acceptance of the work contracted for shall not exceed ninety per centum of the cost of the work done under any contract.

8. The said "Joint Commission," in its discretion, is hereby authorized and empowered to provide and equip any such bridge, and the approaches appurtenant thereto, with such conduits, pipes, supplies, and other appliances, as may be necessary or convenient for the installation, maintenance, and operation of telegraph, telephone, electric light or power, and other public service facilities, and to enter into leases or contracts with public service companies to install such facilities and for the maintenance, operation and use thereof, and to fix, collect, and

receive suitable charges, rents, rentals or tolls for the privilege of leasing, operating, using or maintaining such facilities.

9. The said "Joint Commission" is hereby authorized and empowered, in its discretion, to provide for and regulate the operation of motor busses or similar vehicles on or across any such bridge.

10. Any such bridge, upon its completion, shall be maintained, repaired, and operated in the same manner as interstate toll bridges between the Commonwealth of Pennsylvania and the State of New Jersey heretofore acquired are now by law maintained, repaired and operated.

11. *Provided, however,* that this act shall apply only to the construction of bridges at points located on the section of the Delaware river lying to the northward of the present stone arch railroad bridge of the Pennsylvania Railroad Company, extending across said Delaware river, between the city of Trenton, Mercer county, New Jersey, and the borough of Morrisville, Bucks county, Pennsylvania.

12. This act shall take effect immediately.

Approved April 3, 1928.

(6) The 1934-1935 compact (49 Stat. 1051, 1058 et seq., Act of August 30, 1935; for citations of the State authorizing acts, see p. 4, *supra*):

AN ACT

To authorize the construction of certain bridges and to extend the times for commencing and/or completing the construction of other bridges over the navigable waters of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 9. That the consent of Congress is hereby given to the compact or agreement set forth below, and to each and every term and provision thereof: *Provided,* That nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof.

The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree, each with the other, as follows:

ARTICLE I

There is hereby created a body corporate and politic, to be known as the "Delaware River Joint Toll Bridge Commission" (hereinafter in this agreement called the "commission"), which shall consist of the commissioners, on behalf of the Commonwealth of Pennsylvania, provided for by the Act, approved the 8th day of May 1919 (Pamphlet Laws, 148), and its supplements and amendments, for the acquisition of toll bridges over the Delaware River, and of commissioners, on behalf of the State of New Jersey, provided for by the Act, approved the 1st day of April 1912 (ch. 397), and its supplements and amendments, for the acquisition of toll bridges over the Delaware River, which

said commissions have heretofore been acting as a joint commission by virtue[1] of reciprocal legislation.

No action of the commission shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

The commission shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and shall be deemed to be exercising an essential governmental function in effectuating such purpose, to wit:

(a) The administration, operation, and maintenance of the joint State-owned bridges across the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey, and located north of the present stone arch bridge of the Pennsylvania Railroad across the Delaware River from Morrisville to Trenton;

(b) The investigation of the necessity for additional bridge communications over the Delaware River north of the said railroad bridge, and the making of such studies, surveys, and estimates as may be necessary to determine the feasibility and cost of such additional bridge communications;

(c) The preparation of plans and specifications for, and location, construction, administration, operation, and maintenance of, such additional bridge communications over the Delaware River, north of the aforesaid railroad bridge, as the commission deems necessary to advance the interests of the two States and to facilitate public travel; and the issuance of bonds and obligations to provide moneys sufficient for the construction of such bridges; and the collection

[1] So in original.

of tolls, rentals, and charges for the redemption of such bonds and obligations, and the payment of interest thereon;

(d) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried out.

ARTICLE II

For the effectuation of its authorized purposes, the commission is hereby granted the following powers:

(a) To have perpetual succession.

(b) To sue and be sued.

(c) To adopt and use an official seal.

(d) To elect a chairman, vice chairman, secretary, and treasurer, and appoint an engineer. The secretary, treasurer, and engineer need not be members of the commission.

(e) To adopt suitable bylaws for the management of its affairs.

(f) To appoint such other officers, agents, and employees as it may require for the performance of its duties.

(g) To determine the qualifications and duties of its appointees, and to fix their compensation.

(h) To enter into contracts.

(i) To acquire, own, hire, use, operate, and dispose of personal property.

(j) To acquire, own, use, lease, operate, and dispose of real property and interest in real property, and to make improvements thereon.

(k) To grant the use of, by franchise, lease, and otherwise, and to make and collect charges for the use of, any property or facility owned or controlled by it.

(l) To borrow money upon its bonds or other obligations, either with or without security.

(m) To exercise the power of eminent domain.

(n) To determine the exact location, system, and character of, and all other matters in connection with, any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, maintain, operate, or control.

(o) In addition to the foregoing powers, to exercise the powers, duties, authority, and jurisdiction heretofore conferred and imposed upon the aforesaid commissions, hereby constituted a joint commission by reciprocal legislation of the Commonwealth of Pennsylvania and the State of New Jersey, with respect to the acquisition of toll bridges over the Delaware River, the management, operation, and maintenance of such bridges, and the location, construction, operation, and maintenance of additional bridge communications over the Delaware River north of the aforesaid railroad bridge of the Pennsylvania Railroad.

(p) To exercise all other powers, not inconsistent with the Constitutions of the States of Pennsylvania and New Jersey or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments for benefits; and generally to exercise, in connection with its property and affairs and in connection with property under its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE III

If for any of its authorized purposes (including temporary purposes) the commission shall find it necessary or

convenient to acquire for public use any real property in the Commonwealth of Pennsylvania or the State of New Jersey, whether for immediate or future use, the commission may, by resolution, determine to acquire such property by a fee simple absolute or a lesser interest, and the said determination shall not be affected by the fact that such property has therefore been taken for or is then devoted to a public use, but the public use in the hands or under the control of the commission shall be deemed superior to the public use in the hands or under the control of any other person, association, or corporation.

If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property in the Commonwealth of Pennsylvania, for any reason whatsoever, then the commission may acquire such real property by the exercise of the right of eminent domain, in the manner provided by the Act, approved the 8th day of May 1919 (Pamphlet Laws, 148), entitled "An Act providing for the joint acquisition and maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware River", and the Acts amendatory thereof and supplementary thereto, relating to the acquisition of interstate toll bridges over the Delaware River.

If the Commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property, in the State of New Jersey, for any reason whatsoever, then the commission may acquire such property by the exercise of the right of eminent domain, in the manner provided by the act of the State of New Jersey, entitled "An Act authorizing the acquisition and maintaining by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware River; and providing for free travel across the same," approved the 1st day of April 1912 (ch. 297), and the vari-

ous acts amendatory thereof and supplementary thereto, relating to the acquisition of interestate toll bridges over the Delaware River.

The power of the commission to acquire real property by condemnation or the exercise of the power of eminent domain in the Commonwealth of Pennsylvania and the State of New Jersey shall be a continuing power and no exercise thereof shall be deemed to exhaust it.

The commission and its duly authorized agents and employees may enter upon any land, in the Commonwealth or the State of New Jersey, for the purpose of making such surveys, maps, or other examinations thereof, as it may deem necessary or convenient for its authorized purposes.

However, anything to the contrary contained in this compact notwithstanding, no property, now or hereafter vested in or held by any county, city, borough, village, township, or other municipality, shall be taken by the commission without the consent of such municipality, unless expressly authorized so to do by the Commonwealth or State in which such municipality is located. All counties, cities, boroughs, villages, townships and other municipalities, and all public agencies and commissions of the Commonwealth of Pennsylvania and the State of New Jersey, notwithstanding any contrary provision of law, are hereby authorized and empowered to grant and convey to the commission upon its request, but not otherwise, upon reasonable terms and conditions, any real property which may be necessary or convenient to the effectuation of its authorized purposes, including real property already devoted to public use.

The Commonwealth of Pennsylvania and the State of New Jersey hereby consent to the use and occupation by the commission of any real property of the said two States, or of either of them, which may be or become necessary or convenient to the effectuation of the authorized purposes

of the commission, including lands lying under water and lands already devoted to public use.

The term "real property", as used in this compact, includes lands, structures, franchises, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple and absolute but also any and all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages, or otherwise, and also claims for damage to real estate.

Article IV

Notwithstanding any provision of this agreement, the commission shall have no power to pledge the credit of the Commonwealth of Pennsylvania, or of the State of New Jersey, or of any county, city, borough, village, township, and other municipality of said Commonwealth or State, or to create any debt against said Commonwealth or State or any such municipality.

Article V

The commission is hereby authorized to make and enforce such rules and regulations, and to establish, levy, and collect (or to authorize by contract, franchise, liens, or otherwise, the establishment, levying, and collection of) such tolls, rates, rents, and other charges, in connection with any such bridge across the Delaware River which it may hereafter construct and operate, as it may deem necessary, proper, desirable, and reasonable, which tolls, rates, rents, and other charges shall be at least sufficient to meet interest and sinking-fund charges on bonds and obligations

issued by the commission, the maintenance of such bridge, and the administrative expenses of the commission properly chargeable to such bridge. The commission is hereby authorized and empowered to pledge such tolls, rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes, and as security for the satisfaction of any other obligation assumed by it in connection with such loans or advances.

ARTICLE VI

The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other obligations of the commission, for which tolls, rents, rates, or other revenues have been pledged, that, so long as any of said bonds or obligations remain outstanding and unpaid (unless adequate provision is otherwise made by law for the protection of those advancing moneys upon such bonds or obligations), the Commonwealth of Pennsylvania and the State of New Jersey will not diminish or impair the power of the commission to own, operate, and control said properties and facilities, or to establish, levy, and collect tolls, rents, rates, and other charges in connection with such properties and facilities.

The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or obligations of the commission, for which tolls, rents, rates, or other revenues shall have been pledged, that the said Commonwealth and State will not authorize or permit the construction, operation, and maintenance of any additional bridge or tunnel for the transportation of passengers by vehicles over the Delaware River by any other person or body, than the commission, within a distance of ten miles in either direction from

any such toll bridge, measured along the boundary line between the said Commonwealth and the said State.

Article VII

The bonds or obligations which may be issued by the commission for any of its authorized purposes, and as security for which tolls, rents, rates, and other revenues shall have been pledged, are hereby made securities in which all State and municipal officers and bodies of the Commonwealth of Pennsylvania and the State of New Jersey, and all banks, bankers, trust companies, savings banks, savings and loan associations, investment companies, and other persons carrying on a banking business, or insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever, who now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth of Pennsylvania or of the State of New Jersey, may properly and legally invest funds, including capital belonging to them or within their control; and said bonds or other obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer, or agency of the Commonwealth of Pennsylvania and the State of New Jersey, for any purpose for which the deposit of bonds or other obligations, either of the Commonwealth or of the State, is now or may hereafter be authorized.

Article VIII

The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, and for the increase of their commerce and prosperity, and since the commission will be performing

essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property acquired or used by it for purposes authorized by this agreement; and the bonds or obligations issued by the commission, their transfer, and the income therefrom, including any profits made on the sale thereof, shall, at all times, be free from taxation within the Commonwealth of Pennsylvania and the State of New Jersey.

ARTICLE IX

The commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports, from time to time, to the Governors and legislatures as it may deem advisable.

Whenever the commission, after investigation and study, shall have concluded plans, with estimates of cost, and means of financing any new toll bridge across the Delaware River, as hereinbefore provided, it shall make to the legislatures of each State, at the next sessions thereof, a detailed report, dealing with the contemplated project; but such project may, nevertheless, be proceeded with if the legislatures of said States, or either of them, are not in session.

ARTICLE X

Whenever particular bonds issued for any bridge or bridges, and the interest thereon, shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, the commission shall cease to charge tolls for the use of such bridge and thereafter such bridge shall be a free bridge, and shall thereafter be maintained equally at the cost of the Commonwealth of Pennsylvania and the State

of New Jersey by appropriations made for such purposes, as now provided by law for the maintenance of bridges over the Delaware River acquired by the Commonwealth of Pennsylvania and the State of New Jersey.

In witness whereof, this 18th day of December 1934, A. Harry Moore has affixed his signature hereto as Governor of the State of New Jersey and caused the great seal of the State to be attached thereto.

[SEAL]

A. Harry Moore,
Governor, State of New Jersey.

And, on this 19th day of December 1934, Gifford Pinchot has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached thereto.

[SEAL]

Gifford Pinchot,
Governor, Commonwealth of Pennsylvania.

(7) The 1947 supplemental compact (61 Stat. 752, Act of August 4, 1947; for citations of the State authorizing acts see p. 4, *supra*):

AN ACT

Granting the consent of Congress to a compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Joint Toll Bridge Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the compact or agreement set forth below, and to each

and every term and provision thereof: *Provided,* That nothing herein contained shall be construed to affect, impair, or diminished any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof: *And provided further,* That after the costs of the bridges in a single project have been amortized, such bridges shall thereafter be maintained and operated free of tolls.

"SUPPLEMENTAL AGREEMENT

BETWEEN THE

COMMONWEALTH OF PENNSYLVANIA

AND THE

STATE OF NEW JERSEY

"AMENDING THE AGREEMENT ENTITLED 'AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY CREATING THE DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION AS A BODY CORPORATE AND POLITIC AND DEFINING ITS POWERS AND DUTIES', BY EXTENDING THE JURISDICTION, POWERS, AND DUTIES OF THE COMMISSION AND DEFINING SUCH ADDITIONAL JURISDICTION, POWERS, AND DUTIES

"Whereas, The Delaware River Joint Toll Bridge Commission (hereinafter referred to as the 'commission') was created by a compact or agreement entitled 'Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Toll Bridge Commission as a body corporate and

politic and defining its powers and duties', executed on behalf of the Commonwealth of Pennsylvania by its Governor on the nineteenth day of December, one thousand nine hundred and thirty-four, pursuant to an act of its General Assembly approved the twenty-fifth day of June, one thousand nine hundred and thirty-one (phamphlet laws, one thousand three hundred fifty-two), as last amended by an act of said General Assembly approved the eighteenth day of May, one thousand nine hundred and thirty-three (phamphlet laws, eight hundred twenty-seven), and executed on behalf of the State of New Jersey by its Governor on the eighteenth day of December, one thousand nine hundred and thirty-four, pursuant to an act of its Senate and General Assembly approved June eleventh, one thousand nine hundred and thirty-four (chapter 215, laws of 1934; R. S. (1937) 32:8-1), to which compact or agreement the consent of the Congress of the United States was given by section 9 of an act of the Congress approved August 30, 1935 (Public No. 411, 74th Congress, 49 Stat. 1051, 1058), and under the provisions of which compact or agreement the commission was authorized to administer, maintain and operate certain bridges over the Delaware river and now maintains and operates the same as joint State-owned free bridges; and

"WHEREAS, Because of the great increase in traffic and loads over said bridges since their construction, many of said bridges are now inadequate or unsafe, and it will be necessary to rehabilitate or replace some or all of said bridges with new bridges at the same or different locations in order to provide safe, adequate and convenient facilities for traffic crossing the Delaware river; and

"WHEREAS, It is necessary that the commission have power to issue and sell its bridge revenue bonds, for rehabilitating or replacing existing bridges with new bridges at the same or different locations, for acquiring or constructing additional bridges, and for refunding any bridge revenue bonds of the commission, and that the commission also have power to fix, charge and collect tolls, rates, rents and other charges for the use of any such new bridge or bridges; now therefore,

"The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree, each with the other, as follows:

"(1) Article IX of the Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Toll Bridge Commission as a body corporate and politic and defining its powers and duties, which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on the nineteenth day of December, one thousand nine hundred and thirty-four, and was executed on behalf of the State of New Jersey by its Governor on the eighteenth day of December, one thousand nine hundred and thirty-four, be and the same is hereby amended to read as follows:

"ARTICLE IX

"The Commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions and may make such additional reports, from time to time, to the Governors and Legislatures as it may deem advisable.

"(2) Article X of said Agreement be and the same is hereby amended to read as follows:

"ARTICLE X

"Notwithstanding any other provision of this Agreement, the Commission shall have the following powers:

"(a) The commission may acquire, construct, rehabilitate, improve, maintain, repair and operate bridges for vehicular or pedestrian traffic across the Delaware river between the Commonwealth of Pennsylvania and the State of New Jersey at any locations north of the boundary line between Mercer County and Burlington County in the State of New Jersey as extended across the Delaware river to the Pennsylvania shore of said river.

"(b) The commission may replace any one or more existing bridges across the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey north of said line with one or more new bridges at such locations as the commission may determine to be adequate and convenient for the traffic to be served thereby.

"(c) The commission may acquire by purchase or by the exercise of the power of eminent domain any existing ferry or bridge the acquisition of which the commission may determine to be necessary or advisable in connection with the construction of a new bridge, the cost of such acquisition to be deemed to be a part of the cost of such construction.

"(d) The commission may enter upon, use, occupy, enlarge, construct and improve any street, road or highway located within the limits of any municipality and deemed by the commission to be necessary in connection with the acquisition, construction, improvement, maintenance or operation of any bridge owned or operated by the commission or of any bridge approaches, bridge plazas or approach highways to any such bridge, subject, however, to the consent of the governing body of such municipality

and to such reasonable police regulations as may be established by such governing body.

"(e) The commission may demolish and remove any bridge now operated by it when such bridge has been or is being replaced by a new bridge at the same or a different location which in the determination of the commission will serve substantially the same traffic as that served by such existing bridge, and the commission may sell or otherwise dispose of any ferry or other property of the commission deemed by it to be no longer useful or needed for the purposes of the commission.

"(f) The commission may acquire for the purposes of this article any real property which it shall find necessary or convenient to acquire for public use in the manner provided by Article III of this Agreement, or, in the alternative, in the Commonwealth of Pennsylvania in the same manner and with the same right of entry as the highway department of the Commonwealth may acquire lands by condemnation for highway purposes and in the State of New Jersey in the same manner and with the same right of entry as the highway department of the State may acquire lands by condemnation for highway purposes.

"(g) The commission may make and enforce such rules and regulations with respect to the use of any bridge operated by it as it shall deem proper and reasonable, including regulations limiting the loads permitted on any such bridge and closing to traffic any such bridge deemed by the commission to be unsafe.

"(h) The commission may provide, from time to time, for the issuance of its bridge revenue bonds for any one or more of the following purposes: (1) providing funds for the acquisition, construction, rehabilitation or improvement of any one or more bridges the acquisition, construction, rehabilitation or improvement of which is herein au-

thorized; (2) providing funds for the construction or improvement of approach facilities deemed by the commission to be necessary or desirable in connection with the acquisition, construction, maintenance or operation of any bridge owned or operated by the commission, including but without limitation bridge approaches, entrance plazas, overpasses, underpasses and approach highways; and (3) refunding any bridge revenue bonds or bridge revenue refunding bonds of the commission. The bridge or bridges (including any approach facilities) on account of which a single issue of bonds shall be issued as herein authorized shall constitute a single project for financing purposes.

"(i) The commission may fix, charge and collect tolls, rates, rents and other charges for the use of any bridge or bridges constituting a single project, such tolls to be so fixed and adjusted, subject to any applicable Federal law, as to provide funds at least sufficient (1) to pay the cost of maintaining, repairing and operating such bridge or bridges, including the administrative expenses of the commission chargeable thereto, (2) to pay the bridge revenue bonds or the bridge revenue refunding bonds issued on account of such project and the interest on such bonds, and (3) to provide reserves for such purposes; provided, however, that no tolls shall be charged or collected for the use of any bridge now operated by the commission as a free bridge but only for the use of bridges constructed or acquired by the commission under the provisions of this compact or agreement. Subject to any applicable Federal law, the commission may pledge such tolls, rates, rents and other revenues or any part thereof for such purposes. The commission may establish separate schedules of tolls, rates and charges for use of any bridge on which tolls may be established hereunder by residents of areas adjacent to or served directly by such bridge under such conditions and on such terms as it shall determine to be

proper and reasonable, including tolls, rates and charges for unlimited use of any such bridge.

"No member of the commission shall be subject to any personal liability or accountability by reason of any act or omission of the commission.

"In witness whereof, this 3rd day of July, 1947, Alfred E. Driscoll has affixed his signature hereto as Governor of the State of New Jersey and caused the great seal of the State to be attached thereto.

"Alfred E. Driscoll
"Governor, State of New Jersey

(seal)

"And, on this 9th day of July, 1947, James H. Duff has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached thereto.

"Jas. H. Duff
"Governor, Commonwealth of Pennsylvania."

(Great Seal)

Approved August 4, 1947.

(B) **The 1931-1932 supplemental compact** (46 Stat. 38, Act of March 31, 1932; for citations of the State authorizing Acts see p. 5, *supra*):

AN ACT

Granting the consent of Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Joint Toll Bridge Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the supplemental compact or agreement set forth below, and to each and every term and provision thereof: *Provided*, That nothing therein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof:

Supplemental agreement between the Commonwealth of Pennsylvania and the State of New Jersey.

Amending the agreement entitled "Agreement between the Commonwealth of Pennsylvania and the State of New Jersey Creating the Delaware River Joint Toll Bridge Commission as a Body Corporate and Politic and Defining Its Powers and Duties," as heretofore amended, by extending the jurisdiction and powers of the commission.

Whereas, The Delaware River Joint Toll Bridge Commission (hereinafter referred to as the "commission") was created by a compact or agreement entitled "Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Toll Bridge Commission as a body corporate and politic and defining its powers and duties," executed on behalf of the Commonwealth of Pennsylvania by its Governor on the nineteenth day of December, one thousand nine hundred and thirty-four, pursuant to an act of its General Assembly approved the twenty-fifth day of June,

one thousand nine hundred and thirty-one (Pamphlet Laws 1352), as last amended by an act of said General Assembly approved the eighteenth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws 827), and executed on behalf of the State of New Jersey by its Governor on the eighteenth day of December, one thousand nine hundred and thirty-four, pursuant to an act of its Senate and General Assembly approved June eleventh, one thousand nine hundred and thirty-four (chapter 215, laws of 1934; R.S. (1937) 32:8-1), to which compact or agreement the consent of the Congress of the United States was given by section 9 of an Act of the Congress approved August 30, 1935 (Public No. 411, 74th Congress, 49 Stat. 1051, 1058); and

Whereas, Said compact or agreement was amended by a Supplemental Agreement, executed on behalf of the Commonwealth of Pennsylvania by its Governor on the eighth day of July, one thousand nine hundred and forty-seven, pursuant to an act of its General Assembly approved June thirteenth, one thousand nine hundred and forty-seven (Pamphlet Laws 592), and executed on behalf of the State of New Jersey by its Governor on the third day of July, one thousand nine hundred and forty-seven, pursuant to an act of its Senate and General Assembly approved June thirteenth, one thousand nine hundred and forty-seven (chapter 283, laws of 1947), to which Supplemental Agreement the consent of the Congress of the United States was given by an Act of the Congress approved August 4, 1947 (Public No. 355, 80th Congress, 61 Stat. 752); and

Whereas, It is necessary to protect the investment made by the commission in the bridge now under construction between the City of Trenton, New Jersey, and the Borough of Morrisville, Pennsylvania, and the investments made by said Commonwealth and said State in the ap-

proach highways connected with said bridge, and in order to finance additional bridges over the Delaware River and thereby facilitate the flow of traffic between said Commonwealth and said State; now, therefore,

The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree, each with the other, as follows:

Paragraph (a) of Article X of the Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Toll Bridge Commission as a body corporate and politic and defining its powers and duties, which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on the nineteenth day of December, one thousand nine hundred and thirty-four, and was executed on behalf of the State of New Jersey by its Governor on the eighteenth day of December, one thousand nine hundred and thirty-four, as amended by the Supplemental Agreement which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on the eighth day of July, one thousand nine hundred and forty-seven, and was executed on behalf of the State of New Jersey by its Governor on the third day of July, one thousand nine hundred and forty-seven, be and the same is hereby amended to read as follows:

> (a) The commission may acquire, construct, rehabilitate, improve, maintain, repair and operate bridges for vehicular or pedestrian traffic across the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey at any location north of the boundary line between Bucks County and Philadelphia County in the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river. The commission may also, subject to the approval

of the State Highway Department of the State of New Jersey and the Department of Highways of the Commonwealth of Pennsylvania, lease such bridges as lessor to, and contract for the operation of such bridges by, one or more public bodies, instrumentalities, commissions, or public agencies.

Whenever any bridge north of the boundary line described above in this paragraph (a), proposed to be acquired by the commission pursuant to the provisions of this Agreement, has been constructed pursuant to consent or authorization granted by federal law, the acquisition of such bridge by the commission shall be by purchase or by condemnation in accordance with the provisions of such federal law, or the acquisition of such bridge by the commission shall be pursuant to and in accordance with the provisions of sections 48:5-22 and 48:5-23 of the Revised Statutes of New Jersey, and for all the purposes of said provisions and sections the commission is hereby appointed as the agency of the State of New Jersey and the Commonwealth of Pennsylvania exercising the rights and powers granted or reserved by said federal law or sections to the State of New Jersey and Commonwealth of Pennsylvania jointly or to the State of New Jersey acting in conjunction with the Commonwealth of Pennsylvania. The commission shall have authority to so acquire such bridge whether the same be owned, held, operated or maintained by any private person, firm, partnership, company, association or corporation or by any instrumentality, public body, commission, public agency or political subdivision (including any county or municipality) of, or created by or in, the State of New Jersey or the Commonwealth of Pennsylvania, or by any instrumentality, public body, commission or public agency

of, or created by or in, a political subdivision (including any county or municipality) of the State of New Jersey or the Commonwealth of Pennsylvania.

In addition to other powers conferred upon it, and not in limitation thereof, the commission may acquire all right, title and interest in and to the Tacony-Palmyra Bridge, across the Delaware River at Palmyra, New Jersey, together with any approaches and interests in real property necessary thereto. The acquisition of such bridge, approaches and interests by the commission shall be by purchase or by condemnation in accordance with the provisions of the federal law consenting to or authorizing the construction of such bridge and approaches, or the acquisition of such bridge, approaches or interests by the commission shall be pursuant to and in accordance with the provisions of sections 48:5-22 and 48:5-23 of the Revised Statutes of New Jersey, and for all the purposes of said provisions and sections the commission is hereby appointed as the agency of the State of New Jersey and the Commonwealth of Pennsylvania exercising the rights and powers granted or reserved by said federal law or sections to the State of New Jersey and Commonwealth of Pennsylvania jointly or to the State of New Jersey acting in conjunction with the Commonwealth of Pennsylvania. The commission shall have authority to so acquire such bridge, approaches and interests, whether the same be owned, held, operated or maintained by any private person, firm, partnership, company, association or corporation or by any instrumentality, public body, commission, public agency or political subdivision (including any county or municipality) of,

or created by or in, the State of New Jersey or the Commonwealth of Pennsylvania, or by any instrumentality, public body, commission or public agency of, or created by or in, a political subdivision (including any county or municipality) of the State of New Jersey or the Commonwealth of Pennsylvania. The power and authority herein granted to the commission to acquire said Tacony-Palmyra Bridge, approaches and interests shall not be exercised unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania have filed with the commission their written consents to such acquisition.

The word "bridge" as used in this Agreement shall include such approach highways and interests in real property necessary thereto in said Commonwealth or said State as may be determined by the commission to be necessary to facilitate the flow of traffic in the vicinity of any such bridge or to connect such bridge with the highway system or other traffic facilities in said Commonwealth or said State; *provided, however,* that the power and authority herein granted to the commission in connection with the approach highways shall not be exercised unless and until the Department of Highways of the Commonwealth of Pennsylvania shall have filed with the commission its written approval as to approach highways to be located in said Commonwealth and the State Highway Department of the State of New Jersey shall have filed with the commission its written approval as to approach highways to be located in said State.

Notwithstanding any other provision of this Agreement or any provision of law, state or federal, to the contrary, the commission may combine for

financing purposes any bridge or bridges hereafter constructed or acquired by it with any or all of the bridges described or referred to in any trust indenture securing bridge revenue bonds of the commission at the time outstanding, subject to any limitations or restrictions contained in such trust indenture.

Notwithstanding any provision of this Agreement, nothing herein contained shall be construed to limit or impair any right or power granted or to be granted to the Pennsylvania Turnpike Commission or the New Jersey Turnpike Authority, acting alone or in conjunction with each other, to provide for the financing, construction, operation and maintenance of one bridge across the Delaware River south of the City of Trenton in the State of New Jersey; *provided,* that such bridge shall not be constructed within a distance of ten miles, measured along the boundary line between the Commonwealth of Pennsylvania and the State of New Jersey, from the bridge being constructed across the Delaware River by the commission between the Borough of Morrisville in said Commonwealth and the City of Trenton in said State, so long as there are any outstanding bonds or obligations of the commission for which the tolls, rents, rates, or other revenues, or any part thereof, of said bridge now being constructed shall have been pledged; but such bridge may be constructed at any other location north of the boundary line described above in this paragraph (a). Nothing contained in this Agreement shall be construed to authorize the commission to condemn any such bridge.

IN WITNESS WHEREOF, this 12th day of July 1951, ALFRED E. DRISCOLL has affixed his signature hereto as Governor

of the State of New Jersey and caused the great seal of the State to be attached thereto.

ALFRED E. DRISCOLL
Governor, State of New Jersey

(Great Seal)

Attest:

LLOYD B. MARSH
Secretary of State

And, on this 17th day of July, 1951, JOHN S. FINE has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached thereto.

JOHN S. FINE
Governor, Commonwealth of Pennsylvania

(Great Seal)

Attest:

GENE D. SMITH
Secretary of the Commonwealth

SEC. 2. Subject to the provisions of the compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Toll Bridge Commission, as amended, said commission is hereby authorized to acquire any bridge heretofore constructed under the authority or with the consent of the Congress across the Delaware River. Said commission is hereby authorized to combine for financing purposes any two or more bridges heretofore or hereafter constructed or acquired by the commission and to fix and charge tolls for the use of such bridges so combined and to pledge such tolls in accordance with the provisions of the said compact or agreement, as amended: *Provided,* That in fixing the rates of toll to be charged for the use of any bridge hereafter constructed or acquired by said commission or any bridges so combined, the same shall be so adjusted as to

provide funds sufficient to pay the reasonable costs of maintaining, repairing, and operating such bridge or bridges and their approach facilities under economical management, and to provide funds sufficient to amortize the costs of such bridge or bridges and their approach facilities, including reasonable interest and financing cost, as soon as possible, under reasonable charges, and said Commission may continue such tolls on all bridges heretofore or hereafter constructed or acquired by the commission until all such costs shall have been amortized; after funds sufficient for such amortization shall have been so provided, such bridge or bridges shall thereafter be maintained and operated free of tolls.

SEC. 3. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved March 31, 1952.

(9) The State legislation indicating that the free bridges are State property:

N. J. Laws 1953, Ch. 31, p. 552, at p. 564, sec. 10:

> 10. Section 32:9-10 of the Revised Statutes is amended to read as follows:
>
> 32:9-10. The final compensation awarded or adjudged shall be deemed to include all amounts payable for the acquisition of the property and all rights, franchises and easements incident thereto, and when paid to the proper parties in interest, or paid into the Superior Court, shall vest the title in fee to the property so taken in the State of New Jersey.

Pa., Act of May 8, 1919, P.L. 148 (No. 102) Sec. 7:

> Section 7. As soon as said joint commission shall have acquired any such bridge, either by purchase

or condemnation, the said joint commission shall at once take possession of such bridge in the joint names of the Commonwealth of Pennsylvania and the State of New Jersey. * * *

(10) The titles of the State Acts authorizing 1934-1935 Compact—the New Jersey text (Laws 1934, p. 498, Ch. 215) is given below, the Pennsylvania text (cited at p. 4, *supra*) is substantially the same:

AN ACT providing for joint action by the State of New Jersey and the Commonwealth of Pennsylvania in the administration, operation and maintenance of bridges over the Delaware river, and for the construction of additional bridge facilities across said river; authorizing the Governor, for these purposes, to enter into an agreement with the Commonwealth of Pennsylvania; creating a Delaware River Joint Toll Bridge Commission and specifying the powers and duties thereof, including the power to finance the construction of additional bridges by the issuance of revenue bonds to be redeemed from revenues derived from tolls collected at such bridges; transferring to said commission all powers now exercised by existing commission created to acquire toll bridges over the Delaware river; and making an appropriation.

(11) The special free bridge provision in the New Jersey authorizing Act for the 1934-1935 Compact (Laws 1934, p. 498 at p. 510, Ch. 215, Sec. 4):

4. It is the intention of the Legislature of New Jersey that this act shall in no wise authorize tolls to be collected on bridges crossing the Delaware river now free bridges.

(12) The New Jersey free bridge repair financing provisions apart from the compacts:

R.S. 32:9-12 (N. J. Laws 1922, p. 193, Ch. 106, Sec. 1):

The comptroller of the treasury is authorized to deduct from receipts of the motor vehicle department the amount appropriated for the maintenance and repair of bridges acquired under this chapter.

N. J. Laws 1927, p.77, Ch. 36, Sec. 1:

"1. Section ten of the act of which this act is amendatory be and the same is hereby amended to read as follows:

> 10. * * * From the moneys paid into the treasury of this State as receipts from license fees collected during the calendar year one thousand nine hundred and twenty-seven, pursuant to the provisions of an act entitled 'An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and the speed of motor vehicles; fixing the amount of licenses and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violation,' approved April eighth, one thousand nine hundred and twenty-one, there shall be deducted during said calendar year by the State Treasurer, and kept in a separate fund to be known as the 'free bridge fund,' the sum of three hundred and twenty-five thousand dollars, which said moneys, so as aforesaid collected and retained, shall be paid by the said Treasurer on warrant of the Comptroller, all bills approved by the commission created pursuant to the provisions of the act of which this act is amendatory,

for the purpose of enabling the said commission to defray its proportionate costs for the purposes in this act enumerated; *provided, however,* that nothing in this act contained shall be construed in any wise to affect the provisions of an act entitled 'A supplement to an act to amend 'An act to amend an act entitled 'An act authorizing the acquisition and maintenance by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware river, and providing for free travel across the same,' approved April first, one thousand nine hundred and twelve,' approved April tenth, one thousand nine hundred and nineteen, providing for the use of a portion of the receipts from the Motor Vehicle Fund for the maintenance and repair of said bridges, approved March eleventh, one thousand nine hundred and twenty-two.

N. J. Laws 1946, p. 998, Ch. 298, Sec. 1, N.J.R.S. 32:9-17, N.J.S.A. Pocket Part:

All moneys received from any source whatsoever by the Delaware River Joint Toll Bridge Commission whether from rentals, miscellaneous receipts or from the Commonwealth of Pennsylvania for its proportion of the maintenance of the said bridges is hereby appropriated to the said commission to be used for the maintenance of bridges and the payment to the Commonwealth of Pennsylvania of their proportion of the rentals and miscellaneous receipts. Any unexpended balance on June thirtieth, one thousand nine hundred and forty-six, including receipts from the Commonwealth of Pennsylvania and rental receipts are hereby reappropriated.

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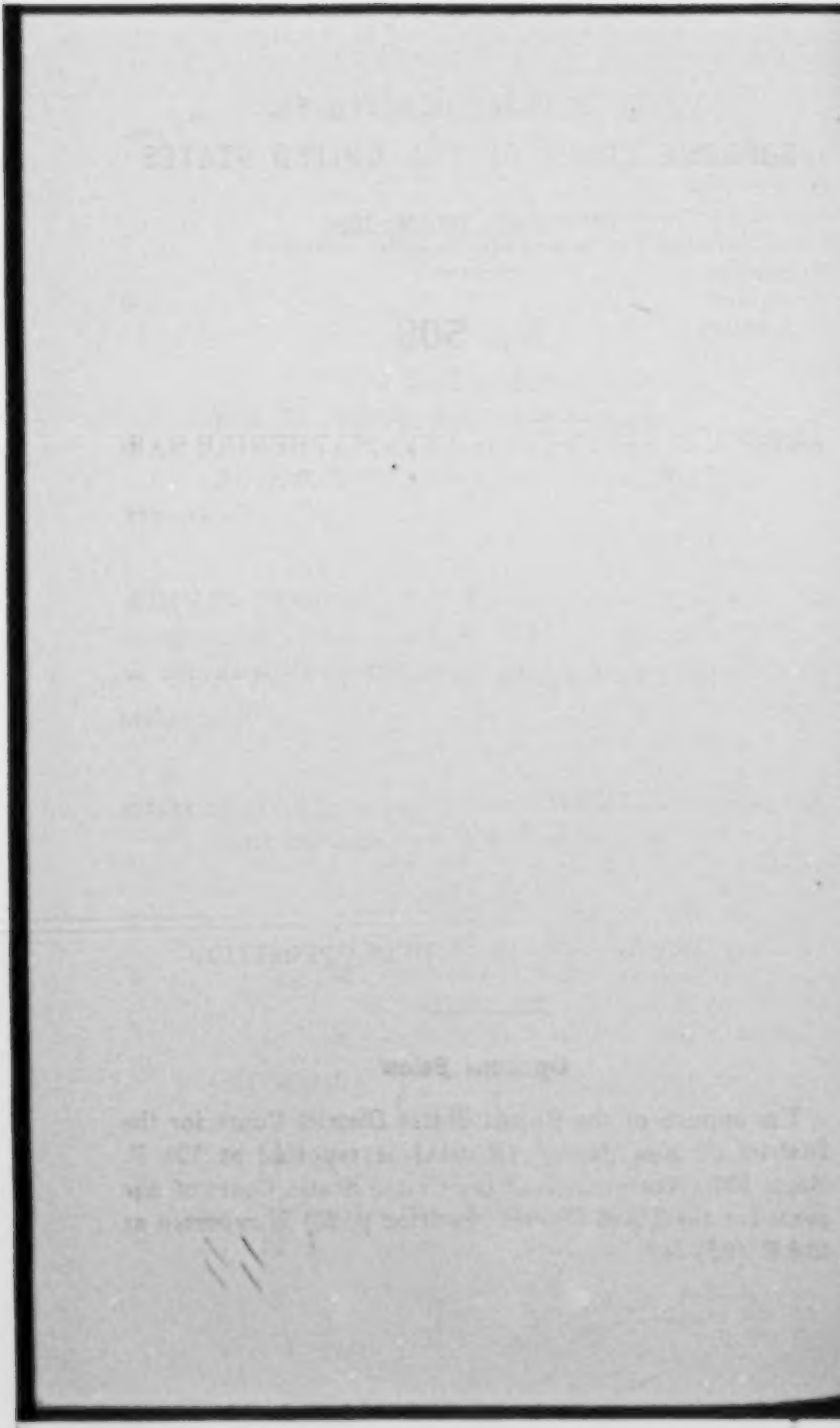

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 505

ARTHUR D. BARTRON AND ANNA KATHERINE BARTRON AND NICHOLAS OR NICK RONCA,
Petitioners,

v.

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, A BODY CORPORATE CREATED BY THE LEGISLATURES OF THE STATE OF NEW JERSEY AND THE COMMONWEALTH OF PENNSYLVANIA,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the United States District Court for the District of New Jersey (R. 24a) is reported at 120 F. Supp. 337. The opinion of the United States Court of Appeals for the Third Circuit (Petition p. 25) is reported at 216 F. (2d) 717.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented

1. Whether the Delaware River Joint Toll Bridge Commission has power to close and demolish a joint state-owned free bridge when such bridge is being replaced by a new toll bridge which in the determination of the Commission will serve substantially the same traffic.

2. Whether the Commission, having determined the necessity for replacing such bridge with a new toll bridge to serve substantially the same traffic, has power as an incident to the financing of the construction of such new bridge to covenant with the bondholders to close and demolish the old bridge.

Constitutional Provisions and Statutes Involved

Petitioners list under the above caption all constitutional provisions and statutes cited in this Brief for Respondent. The following statutes, so listed by Petitioners, are not printed in the Appendix to the Petition but are printed in the Appendix to this Brief:

Pennsylvania Act of May 8, 1919 P.L. 148, Sections 7-10, and

Pennsylvania Act of May 10, 1927 P. L. 863, Sections 1, 10.

Statement

The Legislature of the State of New Jersey, by Chapter 297, Laws of 1912, and the General Assembly of the Commonwealth of Pennsylvania, by Act of July 25, 1913, P. L. 1277 (Petition pp. 33-38), each created a commission to act together as a joint commission to acquire various toll bridges over the Delaware River.

Pursuant to this and similar and related enactments and appropriations by the legislatures of the two states, sixteen privately owned toll bridges crossing the Delaware River, located north of the Pennsylvania Railroad bridge in Trenton, were acquired by the two states and administered, maintained and operated by the "joint commission" above mentioned (R. 32a). Title to these bridges vested in the two states.

Among the bridges so acquired was the bridge in question between Upper Mt. Bethel, Pennsylvania, and Delaware, New Jersey (commonly called the "Delaware Bridge"). This bridge was reconstructed for use as a railroad bridge in 1890. It is supported on a substructure built many years before that date. After use for twenty-four years as a railroad bridge it was sold in 1914 to a private owner and converted into a vehicular toll bridge (R. 32a). Conversion to vehicular traffic was effected by substituting for the rails a floor of reinforced concrete, surfaced by bituminous concrete, or "black-top". It has an eastbound roadway and a westbound roadway, each 11 feet wide between curbs and completely separated from the other by a center truss system (R. 46a, footnote). In 1932 the bridge was purchased by the "joint commission" for $275,000 (from funds appropriated by the legislatures of the two states) and has been maintained and operated as a free bridge since that date.

The Delaware River Joint Toll Bridge Commission, which was created by the Compact between the two states (Petition pp. 44-54), came into being for a dual purpose. First, it assumed and performed all of the functions powers and duties of the former "joint commission" (Compact, Art. II, paragraph (o)). Second, it was empowered to create new and additional facilities, employing, for that purpose, funds raised by revenue bonds (Compact, Art.

I(c), Art. II(l) and Art. V). This method of financing is in contrast with the method used by the "joint commission", which administered, operated, policed and maintained the "free bridges" by means of funds supplied by the two states (Petition p. 37, par. 10; R. 43a). The two states, after 1934, continued to supply funds to the Delaware River Joint Toll Bridge Commission for use in connection with the free bridges by appropriation of the legislatures. The new bridges of the Commission were built with funds derived from the sale of revenue bonds, for the payment of which the credit of the states is not pledged. The interest and principal of such revenue bonds, as well as the cost of maintenance and operation of the bridges during the period while bonds are outstanding, are paid from tolls collected from vehicles using the bridges.

In 1936 the Commission issued its Bridge Revenue Bonds to finance the construction of the Bushkill Street Bridge connecting the City of Easton, Pennsylvania, with the Town of Phillipsburg, New Jersey, an additional facility required by the great volume of traffic at that point (R. 45a) In 1950 the Commission sold $14,500,000 Bridge Revenue Bonds to refinance the Bushkill Street Bridge and to finance the construction of the Easton approach to said Bridge and the new, additional Trenton-Morrisville Bridge (R. 46a). These bonds were secured by a Trust Indenture, under the provisions of which additional bridge revenue bonds could be issued for financing other new bridges over the Delaware River.

In 1950 the Commission caused its engineers and Consulting Engineers, in conjunction with the engineers of the Highway Departments of the two states, to make investigations and surveys and to report to the Commission upon the necessity for new crossings over the Delaware River. The inadequacy and dangerous condition of the Delaware Bridge

are set forth in the Commission's annual report for 1950 required by Article IX of the Compact to be made to the governors and the legislatures of the two states (R. 46a, footnote 12).

To relieve this situation and other dangerous conditions on bridges over the Delaware River, the Commission in 1951 issued, under the provisions of the above mentioned Trust Indenture, $15,000,000 additional Bridge Revenue Bonds for paying the cost of a new bridge between Portland, Pennsylvania, and Columbia, New Jersey (to replace the Delaware Bridge), a bridge at the Delaware Water Gap and a bridge between Milford, Pennsylvania, and Montague, New Jersey (to replace an existing bridge at that location) (R. 47a and 48a). In the resolution authorizing the issuance of these $15,000,000 bonds, the Commission determined

> "* * * that said Additional Bridges at said locations will be adequate and convenient for the traffic to be served thereby and will serve substantially the same traffic as that served by said existing bridges,"

and covenanted as follows in Section 7:

> "The Commission covenants that promptly upon opening the new Milford-Montague bridge for traffic it will close the existing Milford-Montague bridge and will proceed to demolish and remove the same, and that promptly upon opening the new Portland-Columbia bridge and the new Delaware Water Gap bridge for traffic it will close the existing Upper Mt. Bethel-Delaware bridge and will proceed to demolish and remove the same and will close the existing covered bridge to all vehicular traffic." (R. 33a).

The necessity for the construction of these three new bridges is set forth in the annual report of the Commission

to the governors of the two states for the year 1951 (R. 48a, footnote 13, and 49a, footnote 14).

The United States District Court for the District of New Jersey dismissed the complaint of the plaintiffs praying for an injunction to restrain the defendants from closing or demolishing the Delaware Bridge and entered judgment in favor of the defendant Commission. The United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court.

Argument

Petitioners have made practically no effort to bring their request for a writ of certiorari within the framework of Supreme Court Rule 19. They do not contend that the Court of Appeals has rendered a decision in conflict with a decision of another court of appeals on the same matter, or that it has decided an important question of Federal law which has not been, but should be, settled by this Court, or has decided a Federal question in a way to conflict with applicable decisions of this Court.

Petitioners base their request on a contention that this is a question of major and peculiarly compelling public importance and that the granting of the writ would serve the ends of orderly judicial procedure. It is submitted that there are no special or important reasons for this Court to grant a writ of certiorari.

The questions presented by the Petitioners relate to a single bridge across the Delaware river, one of twenty-one bridges under the jurisdiction of the Commission and one of hundreds of bridges which are operated by the states of New Jersey and Pennsylvania within their respective borders. The Petitioners are citizens and taxpayers of the State of Pennsylvania who reside in the vicinity of the Delaware Bridge and who allegedly would be injured in their

property rights by the closing and demolition of said Bridge (Petition, p. 6). They constitute a comparatively small group of people who have unfortunately been inconvenienced by the determination of the Commission, acting pursuant to express statutory authority, to transfer the burden of paying the cost of providing much needed bridge facilities in the Portland, Pennsylvania, and Columbia, New Jersey, area, from the taxpayers of the states of Pennsylvania and New Jersey to the persons who use the bridge facilities.

The inconvenience suffered by the Petitioners as the result of the closing of the free Delaware Bridge is in principle no different from that suffered by other property owners who are affected by the vacation of public streets or highways or the removal or relocation of other public improvements. Regrettable though it is that some people must be adversely affected by these situations, they are nevertheless daily occurrences, for which the courts afford no relief, resulting from the orderly efforts of our federal, state and local governments to cope with the problems of a changing economy so as to provide the most benefit for the greatest numbers. Certainly there is nothing about these situations to constitute them important state questions within the intention of Supreme Court Rule 19.

The Petitioners object to what they denominate as the injection by the lower Court of matters *dehors* the record, complaining of this alleged irregularity as a departure from the usual course of judicial proceedings, but base this "reason" on the ridiculous premise that the Commission, the defendant, must bear the burden of proof and on an absolute disregard of the well recognized presumption of the regularity and lawfulness of official acts.

The Decision of the Court of Appeals Is Clearly Correct

1. *The Commission Is Expressly Authorized to Close and Demolish the Delaware Bridge*

Delaware River Joint Toll Bridge Commission completed the erection of a new bridge across the Delaware River between Portland, Pennsylvania, and Columbia, New Jersey, located about two and one-half miles north of said Delaware Bridge, in November, 1953. The new Portland-Columbia structure, a toll bridge, was opened to traffic on December 1, 1953. Prior to that date, the Commission determined that the Portland-Columbia Bridge would serve substantially the same traffic as that served by the Delaware Bridge, announced that the Portland-Columbia Bridge would replace the Delaware Bridge, and publicly stated that it would, on and after December 1, 1953, close the Delaware Bridge to the public and subsequently demolish it (R. 6a, 10a).

The Commission is expressly authorized to demolish and remove said Delaware Bridge, under such circumstances, by Article X (e) of the Compact, as amended (Petition, p. 59):

> "The commission may demolish and remove any bridge now operated by it when such bridge has been or is being replaced by a new bridge at the same or a different location which in the determination of the commission will serve substantially the same traffic as that served by such existing bridge, and the commission may sell or otherwise dispose of any ferry or other property of the commission deemed by it to be no longer useful or needed for the purposes of the commission."

The plan adopted by the Commission for the amelioration of traffic conditions in the Delaware Water Gap region (including the closing and demolishing of the Delaware

Bridge) is consistent with and furthers the policy of the legislatures of Pennsylvania and New Jersey. The Preambles to the 1947 Supplemental Compact (Petition, p. 55) recite the creation of Delaware River Joint Toll Bridge Commission, its authority to administer, maintain and operate certain existing bridges over the Delaware River, and the fact that it does maintain and operate the same as joint State-owned free bridges, continuing

> "WHEREAS, Because of the great increase in traffic and loads over said bridges since their construction, many of said bridges are now inadequate or unsafe, and it will be necessary to rehabilitate or replace some or all of said bridges with new bridges at the same or different locations in order to provide safe, adequate and convenient facilities for traffic crossing the Delaware river; and
>
> "WHEREAS, It is necessary that the commission have power to issue and sell its bridge revenue bonds, for rehabilitating or replacing existing bridges with new bridges at the same or different locations, for acquiring or constructing additional bridges, and for refunding any bridge revenue bonds of the commission, and that the commission also have power to fix, charge and collect tolls, rates, rents and other charges for the use of any such new bridge or bridges;".

The Commission announced that the Delaware Bridge is being replaced by the Portland-Columbia Bridge, stating that, in the determination of the Commission, the new toll bridge will serve substantially the same traffic as that served by the existing free bridge.

2. *Petitioners' Specious "Reasons for Granting the Writ" Are Neither so Special Nor Important as to Warrant Review by this Court*

Petitioners contend (Points I and II) that the decision of the Court of Appeals "dooming" the free Delaware Bridge jeopardizes the continued availability to the traveling public of the fifteen other free State-owned bridges under the jurisdiction of the Commission. They say, in effect, that the possibility of multiplying by sixteen the inconvenience to be suffered by Petitioners and their neighbors resulting from their subjection to tolls is of such public interest as to prompt a reexamination and reversal of the decision of the Court below. Petitioners ask relief through judge-made law. Review of the decision of the Court of Appeals on this ground is unwarranted and unnecessary.

The fate of any structure other than the Delaware Bridge is not before the Court in this proceeding. If the Petitioners desire to have any action taken with respect to these other bridges, they should appeal to the legislatures of the two states, presently in session, and not to the courts. The matter is entirely legislative in nature and not judicial.

Petitioners contend (Point III) that the Commission is required to preserve perpetually the free bridges, including the Delaware Bridge. Despite Petitioners' statement to the contrary (Petition, p. 11), this contention is most vehemently disputed. The free bridge preservation provisions of the early Pennsylvania and New Jersey statutes were repealed.

New Jersey Laws 1913, p. 527, Ch. 297, Section 31 (Petition, p. 37) provided that the free bridges "shall be kept in constant repair and rebuilt when destroyed". The Pennsylvania Act of July 25, 1913, P. L. 1377, Section 14 (Petition, pp. 13, 39) provides that the free bridges "shall be kept in constant repair, and shall be rebuilt when de-

destroyed". New Jersey Laws 1931, p. 148, Ch. 70, Section 10 (Petition, p. 39) amends Section 10 of New Jersey Laws 1913, supra, omitting the words "rebuilt when destroyed" and provides simply that the free bridges "shall be maintained and kept in constant repair". The effect of the 1931 New Jersey statute is to repeal the preservation provision ("rebuilt when destroyed") of the 1913 statute. Section 10 of the Pennsylvania Act of May 4, 1933, P. L. 148 (Appendix, infra, pp. 16, 17), expressly repeals, in its entirety, the Pennsylvania Act of 1913, supra, substituting, in Section 9 thereof, the phrase "shall hereafter be maintained" for the "rebuilt when destroyed" provision. New Jersey Laws 1937, p. 70, Ch. 36, Section 1 (Petition, p. 39), amends the language of Section 10 of the 1913 Act, as amended by the 1931 Act, to read "shall be rebuilt, constructed, reconstructed and maintained, and kept in constant repair and rebuilt when destroyed" *subject to the proviso* "that appropriate concurrent legislation for the same purpose be enacted by the State of Pennsylvania". No concurrent legislation was ever enacted by Pennsylvania; the "rebuilt when destroyed" provision in New Jersey Laws 1937, supra, never became effective. Petitioners' statement (Petition, p. 13) "that the said free bridge preservation provisions were never been expressly repealed" is absolutely false.

Petitioners in their discussion (Petition, pp. 14 to 31) misapprehend the intent and effect of the later legislation. The Bridge Commission is authorized to exercise the powers and duties previously conferred and imposed upon the predecessor joint commission with respect to the management, operation and maintenance of existing free joint State-owned bridges across the Delaware River by Article I (c) of the Compact (Petition, p. 47). By no statute is the Commission directed to replace a free bridge with a free bridge, nor have any funds ever been appropriated by

either state for this purpose. The program of the Commission is to maintain and operate, free of tolls, the free bridges, so long as they are safe and serve the purpose of the traveling public, and so long as funds to do so are made available.

Petitioners contend (Point IV) that the ruling of the Court below, upholding the power of the Commission to covenant with bondholders that the Delaware Bridge will be closed and demolished, merits review. This contention is based on the theory that a covenant is a promise and a promise is a pledge, and that the Commission by pledging the destruction of a free bridge is pledging the property of the states.

The Commission is expressly authorized to demolish and remove any bridge now operated by it, such as the Delaware Bridge, by Article X (e) of the Compact (Petition, p. 59). The Commission is authorized to enter into contracts by Article II (h) (Petition, p. 46). By Article II (p) (Petition, p. 47) of the Compact, the Commission is authorized to exercise "any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs". It is obvious, therefore, that the Commission, being empowered to close and demolish the Delaware Bridge, is also authorized to enter into a contract binding itself to close and demolish the Delaware Bridge. This covenant with bondholders was made as a part of the financing pr ogram, for the purpose of assuring the bondholders that the revenues from the new bridge will not be impaired by the competition of a nearby free bridge. The covenant to close and demolish the Delaware Bridge is a representation to bondholders that the Commission will exercise one of the powers expressly granted by the Compact to close and demolish, similar to the many other covenants contained in the instruments creating the bond issue, such as the covenant that tolls will be charged on the new

bridge, that the funds derived from tolls will be deposited with and disbursed by a disinterested financial institution as Trustee, and that the operations of the Commission will be examined and supervised by qualified independent accountants. Despite the strenuous efforts of Petitioners to induce confusion, this contention of Petitioners, as is well stated by the Court below, "is so attenuated and fanciful that it does not require any answer except to say that there is nothing in it." (Petition, p. 31)

Further, on this point, it must be noted that this attack on the power of the Commission to covenant to close and demolish the Delaware Bridge is neither relevant nor material to the issue in this case.

Petitioners contend (Point V) that the granting of the writ in the present case would serve the ends of orderly judicial procedure, objecting to the injection into the case of factual matters claimed to be *dehors* the record. Petitioners also assert the existence of a burden on the Commission to prove that it had no excess toll bridge funds for use in promoting the free bridge program and to prove that the construction of the new bridge resulted from the proper exercise of discretion, based on prior planning and survey activities. This is indeed a curious position for Petitioners to take, in view of the fact that the Petitioners, when they instituted this action as Plaintiffs, assumed the burden of proof. It was Petitioners' burden to show that excess toll funds were available to further the free bridge program and to show that the Commission did not exercise proper discretion in planning the construction of the new facilities and the incident closing of the old structures. These side issues were injected in the case by Petitioners subsequent to the filing of the last of their multitudinous pleadings and subsequent to an express disclaimer by them of any desire to introduce testimony. The Court below was entirely justified in drawing inferences from the failure of

Petitioners to plead or prove facts which would support the position now taken by Petitioners. In addition, it is to be assumed (under the universally recognized presumption that, in the absence of proof to the contrary, official acts are performed in due accordance with law) that the discretion of the Commission was properly exercised.

Conclusion

For the foregoing reasons it is respectfully submitted that this Petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

The 1919 Pennsylvania Statute repealing the 1913 Free Bridge Act: Act of May 8, 1919, P.L. 148, at 151, 152:

* * * * * * *

Section 7. As soon as said joint commission shall have acquired any such bridge, either by purchase or condemnation, the said joint commission shall at once take possession of such bridge in the joint names of the Commonwealth of Pennsylvania and the State of New Jersey. Toll charges on such bridge shall thereupon cease, and such bridge shall thereafter be free to the traveling public, under such rules and regulations as may be prescribed by said joint commission or its lawful successors. Any railroad or railway, now having the use of any such bridge by lease or agreement, shall pay, according to the rules and regulations of the joint commission or as otherwise provided by law, such rental charges now paid to the owner or owners of such bridge or such other charges as may be agreed upon or required by law.

Section 8. Upon the acquisition of any such bridge by the Commonwealth of Pennsylvania and the State of New Jersey, the same shall remain in the charge and control of said joint commission or its successors. Such bridge shall thereafter be maintained jointly by the Commonwealth of Pennsylvania and the State of New Jersey. Fifty per centum of any and all expense in connection with such maintenance shall be paid by the Commonwealth of Pennsylvania, and fifty per centum shall be paid by the State of New Jersey. Fifty percentum of the net income shall be paid to the Commonwealth of Pennsylvania and fifty per centum to the State of New Jersey, or to such body or bodies as may be provided by law in each State: Provided, That appropriate concurrent legislation for the same purpose be enacted by the State of New Jersey.

Section 9. To carry out the provisions of this act the unexpended balance, appropriated under the provisions of the act, approved the twenty-fifth day of July, one thousand nine hundred and thirteen (Pamphlet Laws, twelve hundred and seventy-seven), entitled "An act providing for the joint acquisition and the maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware River, and making an appropriation therefor," and reappropriated under the provisions of the act, approved the twenty-fifth day of July, one thousand nine hundred and seventeen (Pamphlet Laws, eleven hundred and eighty-four), entitled "An act providing for the joint acquisition and maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware River and making an appropriation therefor," is hereby specifically reappropriated. The amount herein appropriated shall be available until the purposes of this act may be accomplished, and shall not be held or construed to have lapsed for the reason that the same was not used within the specified time after the passage of this act.

Section 10. The act of Assembly, entitled "An act providing for the joint acquisition and maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware River, and making an appropriation therefor," approved the twenty-fifth day of July, one thousand nine hundred and thirteen (Pamphlet Laws, twelve hundred and seventy-seven); and the act of Assembly, entitled "An act providing for the joint acquisition and maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware River, and making an appropriation therefor," approved the twenty-fifth day of July, Anno Domini one thousand nine hundred and seventeen (Pamphlet Laws, eleven hundred and eighty-four); and all other

acts or parts of acts inconsistent herewith be, and the same are hereby, repealed.

The 1927 Pennsylvania amendment to the 1919 Free Bridge Act: Act of May 10, 1927, P.L. 863:

No. 441

A SUPPLEMENT

To an act, approved the eighth day of May, one thousand nine hundred and nineteen (Pamphlet Laws, one hundred and forty-eight), entitled "An act providing for the joint acquisition and maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware River," and its amendments, extending the powers of the commission created under said act so as to provide for the construction and maintenance of free bridges.

Section 1. Be it enacted, etc., That the commission constituted under the act to which this act is a supplement, and its amendments, for the acquisition of toll bridges over the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey, is hereby constituted a commission to act in conjunction with a similar commission or body of the State of New Jersey, for the purpose of providing for the erection and construction of additional bridges across the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey.

The phrase "joint commission," as used in this act, shall be construed to mean the commission hereby constituted and the similar commission or body of the State of New Jersey.

* * * * * * *

Section 10. Any such bridge, upon its completion, be maintained, repaired, and operated in the same m as interstate toll bridges between the Commonweal Pennsylvania and the State of New Jersey heretofo quired are now by law maintained, repaired, and ope

JAN 3 7 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 505

ARTHUR D. BARTRON and ANNA KATHERINE BARTRON and NICHOLAS or NICK RONCA,

Petitioners,

vs.

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, a Body Corporate created by the Legislatures of the State of New Jersey and the Commonwealth of Pennsylvania,

Respondent.

COUNTY OF NORTHAMPTON, PENNSYLVANIA;
COUNTY OF MONROE, PENNSYLVANIA;
COUNTY OF WARREN, NEW JERSEY;
TOWN OF BELVIDERE, NEW JERSEY;
BOROUGH OF PORTLAND, PENNSYLVANIA;
TOWNSHIP OF WHITE, NEW JERSEY,

Amici Curiae.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT BRIEF OF *AMICI CURIAE*

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Davis, Administrative Law (1951), Ch. 19 12

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BOROUGH OF PORTLAND, PENNSYLVANIA;
TOWNSHIP OF WHITE, NEW JERSEY,

Amici Curiae.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT BRIEF OF *AMICI CURIAE*

This brief is filed jointly by the Counties of Northampton and Monroe of the Commonwealth of Pennsylvania, the County of Warren of the State of New Jersey, the Borough of Portland of the Commonwealth of Pennsylvania and the Township of White and the Town of Belvidere of the State of New Jersey. The governing body of each of the *amici curiae* has adopted a formal resolution authorizing this appearance and the filing of this brief.

The Interests of the *Amici Curiae*

All of the *amici curiae* are political subdivisions of the State of New Jersey or of the Commonwealth of Pennsylvania.

The *amicus curiae* Northampton County is a county of the Commonwealth of Pennsylvania. The Delaware-Upper Mount Bethel Township Bridge, whose proposed destruction by the Delaware River Joint Toll Bridge Commission is sought to be prevented by the petition for a writ of certiorari herein, is located, on its Pennsylvania side, within the boundaries of Northampton County. The population of Northampton County is approximately 189,000. The destruction of the free bridge here involved will cause serious inconvenience and loss to the County and to its people, especially to the large number of the County residents who have been accustomed to use the free bridge daily. Northampton County has a further important interest in this matter in that two other free bridges controlled by the Delaware River Joint Toll Bridge Commission have their Pennsylvania terminus in Northampton County. These two other free bridges are the Easton-Phillipsburg Bridge and the Riverton-Belvidere Bridge. As pointed out in the petition for a writ of certiorari herein (pages 10-11), the Delaware River Joint Toll Bridge Commission has under its jurisdiction sixteen of these publicly-owned free Delaware bridges including the three free bridges in Northampton County, one of which is directly involved in the present case. If the free bridge involved in the present case may lawfully be destroyed by the Bridge Commission, all of the remaining free Delaware River Bridges controlled by the said Commission, including the two other free bridges in Northampton County, would be jeopardized.

The *amicus curiae* Warren County is a county of the State of New Jersey. Its population is approximately

55,000. The free bridge involved in the present case is located, at its New Jersey terminus, in Warren County. The life of the entire county and of its people has been for many years importantly dependent upon the free bridge here involved. This is especially true of Knowlton Township, which is located in Warren County at the New Jersey terminus of the instant free bridge, and whose life has long been closely and integrally united with the life of the Borough of Portland located immediately across the Delaware River in Pennsylvania. The closing of the instant free bridge which occurred about one year ago has in effect cut in two the integrated community and business life of Knowlton Township in New Jersey and the Borough of Portland in Pennsylvania. In addition, three other free bridges controlled by the Delaware River Joint Toll Bridge Commission, all of which would be jeopardized if the Commission be finally held to have power to destroy the free bridge directly involved in this case, are located in Warren County at their New Jersey termini and constitute vital facilities in the life of the County. These three other free bridges are the Easton-Phillipsburg Bridge, the Riverton-Belvidere Bridge, and the Riegelsville Bridge.

The *amicus curiae* Monroe County is a County of the Commonwealth of Pennsylvania. The population of the County is approximately 33,000. The Southern boundary line of Monroe County is about four miles from the free bridge involved in this case. The Borough of Stroudsburg, which is the County seat of Monroe County, is eight to ten miles from the said bridge. Monroe County has no free Delaware River Bridge of its own. The existence of the instant free bridge has been an important advantage in the life of the County.

The *amicus curiae* Borough of Portland is located in Northampton County, Pennsylvania. The Borough stands at the Pennsylvania terminus of the free bridge involved

in this case. The population of the Borough is approximately 550. The closing of the instant free bridge which occurred about one year ago (its destruction having been stayed only because of the instant pending litigation) has had a drastic effect on the life of the Borough. The Borough has been in effect isolated from its sister community on the New Jersey side of the River, the Township of Knowlton in Warren County. These two municipalities had been living virtually as a single community joined by the free Delaware bridge which is involved in the present case. The damage to the business life of the Borough of Portland has been very severe and property values in the Borough have substantially depreciated. If the instant free bridge should finally be destroyed, the artificial severance of the Borough from its sister community in New Jersey would be permanent and the readjustment of the life of this unified bi-state community would involve great hardship.

The *amicus curiae* Township of White is in Warren County, New Jersey. Its population is approximately 1500. It is two miles away from the free bridge involved in this case, and one-half mile from another free bridge, the Riverton-Belvidere Bridge, whose continued existence would be threatened if the Bridge Commission's power to destroy the instant free bridge is sustained. The life of the Township of White is importantly dependent on these free Delaware River Bridges.

The *amicus curiae* Town of Belvidere is located in Warren County, New Jersey. Its population is approximately 2400. The town is ten miles from the free bridge involved in this case. However, the more important and immediate reason why the town of Belvidere is interested in this case, is that another free bridge controlled by the Delaware River Joint Toll Bridge Commission, the Riverton-Belvidere Bridge, has its New Jersey terminus in the Town of

Belvidere. Since the disposition of the legal issues involved in the present case is likely eventually to affect all of the free Delaware River Bridges controlled by the Commission, and since the life of the Town of Belvidere is especially bound up with the free Riverton-Belvidere Bridge, the interest of the Town of Belvidere in this case is a substantial and urgent one.

ARGUMENT

POINT I

The opinion of the Court of Appeals does not come to grips with the questions of statutory construction on whose correct decision the Bridge Commission's power to destroy these free bridges depends.

The petition for a writ of certiorari herein shows, we believe, that the Court of Appeals took an over-simplified view of the very extensive body of legislation which needs to be considered in deciding this case (See Petition, pages 13-21). As pointed out in the petition, the Court of Appeals' opinion is barren of any mention of the systematic provisions in the interstate compacts for the financing of the needs of the free bridge program (Petition, pages 17-21). This failure by the Court of Appeals to give adequate or indeed any consideration to the elaborate statutory free-bridge financing provisions wholly vitiates that Court's reading of the entire 40-years' body of applicable legislation. It is our contention that the two States intended the free bridges and the newer toll bridges to exist together, and that the Legislatures of the two States made systematic provision for the financing of such a concurrent free and toll bridge system. The Court of Appeals has focused too much attention on the toll bridge aspects, and it has thereby been led to the erroneous conclusion that the free

bridges of the two States were somehow expected gradually to disappear. The Legislatures intended no such gradual disappearance of the free bridges, and they made provision for financial facilities to guard against that result. In view of the unrepealed status of the original free bridge preservation requirements (See Petition, pages 15-17), and in view of the free bridge preservation provisions and the integrated free bridge-toll bridge financing provisions in the later legislation (Petition, pages 16-21), the spelling-out of a legislative intent to allow the gradual destruction of the free bridges would require the most clear and unmistakable legislative language. There is no such indication anywhere in this entire body of legislation. The Court of Appeals was able to come to the conclusion which it reached only by taking isolated excerpts out of this 40-years' body of legislation and by reading those excerpts in an over-simplified way while disregarding the overwhelming indications that the free bridges and the toll bridges were intended to co-exist.

POINT II

The covenant or pledge to destroy the free bridge is unconstitutional.

The petition for certiorari (pages 21-23) shows that the Bridge Commission's covenant with bondholders for destruction of the free bridge is statutorily *ultra vires*. The petition also presents questions as to the constitutionality of the covenant, but it states that those questions are not elaborated in the petition (pages 3, 4). The *amici curiae* respectfully invite this Court's attention to the said constitutional questions.

As shown in the petition (page 22), the instant free bridge is State property. The pledging of the destruction

of this State property runs into a veritable buzz-saw of constitutional inhibitions. It is an unconstitutional gift of State property to private persons. It is an unconstitutional loan or pledge of the States' credit. It is an unconstitutional creation of a State debt.

The "debt" aspect raises undoubtedly the most serious constitutional objection. *N. J. Const.* Art. 8, §2, par. 3; *Pa. Const.*, Art. 9, §4.

The incurring of any *obligation* by a state involving money or other property is a "debt" within the generic meaning of the constitutional debt restriction provisions. For the broad and diverse meaning of the term "debt" in this branch of the law, see, *e.g., In re Opinion to the Governor,* 54 R. I. 45, 169 Atl. 748, 89 A. L. R. 1521 (1933) (pledge or transfer of state property creates a "debt"); *Opinion of the Justices,* 252 Ala. 468, 41 So. 2d 771 (1949) (unlawful pledge of tax revenues creates a "debt"); *State* v. *Donald,* 160 Wis. 21, 151 N. W. 331 (1915) (contractual promise by the state to buy land creates a "debt"); *Burke* v. *Snively,* 208 Ill. 328, 70 N. E. 327 (1904) (appropriation of funds creates a "debt"); *State Capitol Commission* v. *State Board of Finance,* 74 Wash. 15, 132 Pac. 861 (1913) (pledge of state's credit to payment of capitol building bonds creates a "debt"); *State ex rel. Blackmore* v. *Graham,* 25 La. Ann. 625 (1873) (refunding of improperly collected taxes creates an "increase" in the state "debt"); *Lewis* v. *Brady,* 17 Idaho 251, 104 Pac. 900, 28 L. R. A. (N. S.) 149 (1909) ("debt" and "liability" are not used "in a technical sense"). See also, for a recent comprehensive treatment of the term "debt" or "liability", *Opinion of the Justices,* 146 Me. 183, 79 A. 2d 753 (1950).

The pledge of the Bridge Commission herein to destroy a valuable property of the two States, creates an "obligation", a "liability", a "debt", within the constitutional

meaning. Any such "debt" becomes an addition to the existing "debt" total of the respective States. In New Jersey the constitutionally limited debt total may be increased in only one way, namely, by popular referendum upon a legislative proposal for such debt increase. *N. J. Const.* Art. 8, §2, par. 3; *Behnke* v. *New Jersey Highway Authority,* 13 N. J. 14, 97 A. 2d 647 (1953). In Pennsylvania, even the referendum method is seemingly unavailable, and the only method for increasing the constitutionally limited "debt" is seemingly by constitutional amendment. *Pa. Const.,* Art. 9, §4.

If in fact, as we contend, the destruction of a free bridge, being the creation of a "debt" or "liability", could lawfully be authorized in New Jersey only by referendum, and in Pennsylvania only by constitutional amendment, then the Commission's proposed course of conduct is unconstitutional; hence such course could not be even expressly permitted to the Commission, or ratified, by statute or bistate compact.

If we pause to consider the real meaning and purpose of the constitutional debt restriction provisions in question, we may readily appreciate that it is entirely logical and sensible that a public agency in the position of this Commission should be thus debarred from pledging the destruction of the people's property without the people's consent, as is being attempted in this case. The debt restriction provisions, together with their companion constitutional prohibitions against public gifts (the "gift" prohibition is implied, throughout the state constitutions, see e.g., *Los Angeles County* v. *Jessup,* 11 Cal. 2d 273, 78 P. 2d 1131 (1938)), loans, and credit pledges (*N. J. Const.,* Art. 8, §2, pars. 1, 3, §3, par. 2; *Pa. Const.,* Art. 3, §§17, 18, Art. 9, §§4, 6), are guarantees against the attrition of the public resources through improvidence on the part of legislators. The improvidence which is feared is not only that attendant upon corruption, favoritism, or squan-

dering. More fundamentally, the debt restrictions aim at a pay-as-you-go policy; public debts are not desired for whose liquidation public revenues are not in sight.

It is true that with the extensive development of modern governmental corporations, quasi-independent "authorities", etc., which operate on a self-sustaining fiscal basis, the public debt restrictions have, for all practical purposes, undergone a very great stretching. However, for this very reason, no such government corporation or authority (or "Joint Commission") ought to be permitted to operate beyond the already ample fiscal boundaries which it enjoys. The offense against these canons of governmental morality which occurs when the constitutional debt restrictions are circumvented or undermined, is most intolerable when the offender is a semi-independent body whose fiscal operations already enjoy virtual emancipation from the traditional debt restrictions. It ill behooves such a body to thrust against its already indulgent barriers.

Moreover, it should not be supposed that the law of governmental debt restriction, because it has responded to these newer fiscal needs, has wholly abdicated the field to the semi-independent agencies. The courts are insistent, in cases involving these bodies, that such debts as they contract must be financed out of their revenues, exclusively. E.g., *Housing Authority of Los Angeles County* v. *Dockweiler*, 14 Cal. 2d 437, 94 P. 2d 794 (1939); *Keller* v. *State Board of Education of Alabama*, 236 Ala. 400, 183 So. 268 (1938); *People ex rel. City of Chicago* v. *Barnett*, 373 Ill. 393, 26 N. E. 2d 478 (1940); *Attorney General ex rel. Eaves* v. *State Bridge Commission*, 277 Mich. 373, 269 N. W. 388, aff'd 270 N. W. 308 (1936). The case last cited is typical. It held, with respect to the question of state aid to a fiscally semi-independent bridge commission, that the commission must rely exclusively on its revenues, and that *the state may not indirectly finance a project which it could not finance directly.*

So here, we submit, the Commission cannot ask the two States to do indirectly what they could not do directly. The States could not directly or indirectly pledge to the Commission's bondholders any property or credit or other assets of the States in furtherance of the Commission's wish to pay lower interest rates or to find a ready market for its bonds. No more could the States, themselves, indirectly attempt the same thing. How much less, then, may this Commission, a mere delegate of the States, pursue the forbidden aim?

It is in no way intemperate or carping to suggest, as we are doing, that the requirements of the constitutional referendum (N. J.) or amendment (Pa.) method must be brought to bear upon the Commission's proposal to pledge the destruction of a state-owned free bridge in aid of the Commission's credit. The bringing to bear of the public referendum process upon situations of this type is, *par excellence,* the way of resolving them to everyone's satisfaction, and without those aftermath feelings of aggrievement and betrayal of the sort, which, unfortunately, have not been absent from this very case among the citizenry who use this free bridge. For this case involves, in the most literal way, the classically typical raw materials of the constitutional tradition. It involves the people's public property, something which they own and use in common, something which is as close and immediate a part of their daily lives as their parks and their public buildings. When a case involving *that* kind of public property, happens to involve also a public debt aspect, together with the people's referendum right under the constitutional debt restriction, the combination is not one well-suited to be by-passed by administrative self-help methods.

The constitutional principle of debt restriction and referndum is not confined in its application merely to situations of financial magnitude. It is a *principle,* and it can cease to be one just as surely by attrition as by succumbing to frontal assault.

POINT III

Dispositive factual findings have been made in this case by the Court of Appeals and the Commission without any hearing thereon and without any proper record in support thereof. The *amici curiae* are particularly concerned with this aspect of the case because, as governmental bodies directly interested in the subject matter on behalf of their citizenry, they are aggrieved by administrative action affecting such interests without public hearings.

The petition herein points out that the Court of Appeals, in resorting to factual matters outside the record, committed error which may well have been dispositive. Two such factual matters are mentioned in the petition, i.e., (1) the Court of Appeals' acceptance of the Bridge Commission's unproven assertion that it had no excess toll bridge funds to use in meeting the needs of the free bridge program, and (2) the action of the Court of Appeals in adducing facts outside the record relating to the Bridge Commission's asserted planning and survey activities prior to the making of the covenant. The petition points out also that as to both of these matters questions are presented that could be properly determined only through a judicial hearing on the issues of fact involved, those questions being (1) whether the Bridge Commission has reasonably executed its delegated powers in administering, in the way it has done, the integrated statutory financing arrangements for the joint administration of the toll bridge and free-bridge programs, and (2) whether there was in fact a proper exercise by the Commission of official discretion prior to the making of the covenant or whether instead the covenant is fatally defective because

it improperly binds and stultifies the Commission's reasonable exercise of an independent discretion (See Petition, pages 23-24).

This aspect of the case is of particular interest to the *amici curiae* because they would have welcomed an opportunity to be heard administratively on the factual issues above mentioned, an opportunity which the *amici* have never had because the Bridge Commission handled this entire matter on an internal administrative basis. Also, the original proceedings in the United States District Court did not reach any factual issues and were disposed of on an extremely expedited basis (See Petition, page 7). A reversal and remand in this case would presumably lead to a proper judicial or administrative hearing in which these essential factual issues could be explored.

It is self-evident, we submit, that the Bridge Commission could not validly claim an absolute, plenary, or wholly non-reviewable power to eliminate free bridges. The Commission is, at best, merely a legislative delegate, a creature of limited powers. *Cf. Work* v. *Mosier,* 261 U. S. 362 (1923); *Waite* v. *Macy,* 246 U. S. 606 (1918). No one would contend that the subject matter of the Commission's statutory jurisdiction is of such a nature as would give rise to any doctrine of non-justiciability with respect thereto. *Cf. Davis, Administrative Law* (1951), Ch. 19.

Among the statutorily indicated considerations pertinent to be taken into account in a judicial proceeding testing the validity of the exercise by the Commission of a supposedly discretionary power to eliminate a free bridge, would be the following:

(1) Whether the record before the Court contains the necessary quantum of appropriate proofs permitting the conclusion that the bridge was in fact physically unsafe or otherwise inadequate, in light of the statutory purposes

to facilitate trans-Delaware River vehicular travel, and in light of the Commission's power and duty to meet its statutory responsibilities for maintaining safe bridges and for effectuating the other statutory purposes.

(2) Whether, the bridge having assumptively been duly shown to be unsafe or otherwise inadequate in the senses just suggested, the record proofs permit the conclusion that the Commission's determination as to the disposition to be made of the bridge (if that determination be to abandon or eliminate it) is reasonable, in the light of the Commission's overall statutory powers and duties with respect to (a) the fostering of the free bridge program (the statutes being assuredly *at least favorable* to the latter objective even on the assumption that they do not embody an absolute policy command therefor), and (b) the available statutory facilities for financing free bridges from the revenues of toll bridges (such statutory financing facilities, in all their amplitude and flexibility as described in the Petition herein (pp. 17-21), being assuredly available and their use being assuredly favored as a matter of legislative policy even on the assumption, once again, that we are dealing with a statutorily authorized administrative discretion instead of a binding statutory mandate).

We do not presume at this time to suggest just which canons of judicial review would be appropriate, or just what is the precise quantum of proof which ought fairly and appropriately to be required, in a judicial hearing on issues of the type above enumerated. But, be those canons and those quanta ones which might burden the Commission ever so lightly in its task of justifying the exercise of its asserted discretionary authority, the traces of their operativeness in the proceedings below may be searched for in vain, because *no* canons of judicial review were there applied and *no* quantum of proof was there enforced—because, in turn, the District Court did not conduct any

hearing whatsoever on any issues relating to a supposedly discretionary authority of the Commission to eliminate the free bridge here involved, while the Court of Appeals simply made an excursion *dehors* the record, as previously mentioned.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari to review the judgment of the Court of Appeals for the Third Circuit should be granted in the interests of the *amici curiae* and their citizenry.

Respectfully submitted,

RICHARD D. GRIFO,
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JAMES T. KITSON,
Solicitor for the County of Monroe, Pennsylvania, Amicus Curiae.

LEWIS S. BEERS,
County Counsel of Warren County, New Jersey, Amicus Curiae.

SAUL N. SCHECHTER,
Attorney for the Town of Belvidere, New Jersey, Amicus Curiae.

ALFRED M. NITTLE,
Solicitor for the Borough of Portland, Pennsylvania, Amicus Curiae.

WILBUR M. RUSH,
Attorney for the Township of White, New Jersey, Amicus Curiae.

WILBUR M. RUSH,
SAUL N. SCHECHTER,
Of Counsel.

FILED

FEB 4 1955

HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 505

ARTHUR D. BARTRON and ANNA KATHERINE BARTRON and NICHOLAS de NICK BUNGA,

Petitioners,

vs.

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, a Body Corporate Created by the Legislatures of the States of New Jersey and the Commonwealth of Pennsylvania,

Respondent

COUNTY OF NORTHAMPTON, PENNSYLVANIA; COUNTY OF MONROE, PENNSYLVANIA; COUNTY OF WARREN, NEW JERSEY; TOWN OF BELVIDERE, NEW JERSEY; BOROUGH OF PORTLAND, PENNSYLVANIA; TOWNSHIP OF WHITE, NEW JERSEY,

Amici Curiae

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE THIRD CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION OF WRIT OF CERTIORARI

[illegible]

[illegible]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 505

ARTHUR D. BARTRON AND ANNA KATHERINE BARTRON AND NICHOLAS OR NICK RONCA,

Petitioners,

vs.

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, A BODY CORPORATE CREATED BY THE LEGISLATURES OF THE STATE OF NEW JERSEY AND THE COMMONWEALTH OF PENNSYLVANIA,

Respondent

COUNTY OF NORTHAMPTON, PENNSYLVANIA; COUNTY OF MONROE, PENNSYLVANIA; COUNTY OF WARREN, NEW JERSEY; TOWN OF BELVIDERE, NEW JERSEY; BOROUGH OF PORTLAND, PENNSYLVANIA; TOWNSHIP OF WHITE, NEW JERSEY,

Amici Curiae

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO BRIEF OF AMICI CURIAE

Supplemental Statement of the Case

It is felt that the following factual statement is necessary to correct inaccuracies and exaggerations in the Brief of *amici curiae* under the title "the Interests of the Amici Curiae" (A. C. Brief pp. 2-5).

No inconvenience whatsoever will be caused to the great majority of the 189,000 inhabitants of Northampton County, Pennsylvania, the 54,000 inhabitants of Warren County, New Jersey, or the 33,000 inhabitants of Monroe County,

Pennsylvania if the Commission closes and demolishes the free bridge between Delaware, Knowlton Township, New Jersey and Upper Mt. Bethel Township, Northampton County, Pennsylvania, commonly called the "Delaware Bridge". The closing and demolition of the Delaware Bridge will cause some slight inconvenience to a small group of people living in the immediate area surrounding the termini of the bridge.

Warren County's fifty-mile western boundary is the Delaware River. Across the Delaware River in Pennsylvania, Monroe County faces Warren County, New Jersey for about fifteen miles and, to the south, faces Northampton County, Pennsylvania for about thirty-five miles. Seven bridges across the Delaware, under the jurisdiction of the Commission, are presently available in the above area. Going north up the river, they are (1) a free bridge between Riegelsville, New Jersey and Riegelsville, Pennsylvania, (2) a free bridge between Phillipsburg, New Jersey and Easton, Pennsylvania, (3) a toll bridge between Phillipsburg, New Jersey and Easton, Pennsylvania, (4) a free bridge between Belvidere, New Jersey and Riverton, Pennsylvania, (5) a toll bridge between Columbia, New Jersey and Portland, Pennsylvania, (6) a (pedestrian) free bridge between Columbia, New Jersey and Portland, Pennsylvania, and (7) a toll bridge between Pahaquarry Township, New Jersey and Delaware Water Gap, Pennsylvania. These bridges are located at convenient intervals and provide crossings for important east-west highways and connecting links between townships, towns or cities on either side of the river. The heavy concentration of population near the river is in the Easton-Phillipsburg area. U. S. Route 22 passes through Bethlehem (the most populous city in Northampton County), Easton and Phillipsburg; this highway, which crosses the river by the toll bridge at Bushkill Street, car-

ries a heavy volume of traffic between New York and Harrisburg and western points. In addition to the Bushkill Street toll bridge, Easton and Phillipsburg are joined by the Northampton Street free bridge, available for local traffic.

The Delaware Bridge is eighteen miles north of Easton. The village of Delaware consists of about 500 people. The part of Upper Mt. Bethel Township affected, in the vicinity of the Pennsylvania end of the bridge, is sparsely populated farm land, with the nearest municipality two and one-half miles up the river at Portland, Pennsylvania.

The most heavily settled communities in the vicinity of Delaware are the village of Columbia, New Jersey, the Borough of Portland, Pennsylvania, immediately across the river from Columbia, and the town of Belvidere, New Jersey, the county seat of Warren County. Belvidere and Columbia have been and will continue to be accessible to residents of Delaware without crossing the river. Before construction of the new facilities in this general area, residents of Delaware reached Portland, Pennsylvania, by way of the Delaware Bridge or by means of the covered wooden bridge between Columbia and Portland. If the Delaware Bridge is closed and demolished, residents of Delaware may reach Portland either by crossing the new Portland-Columbia Bridge, paying a commutation rate of five cents per passage, or may park their automobiles at the village of Columbia and cross the river on foot by the covered bridge, now restricted to pedestrian traffic. By reason of the new toll bridge at Delaware Water Gap and the limited access highway connecting Columbia and the Delaware Water Gap, the inhabitants of Delaware now have much better access to Stroudsburg, the largest community in and the county seat of Monroe County, Pennsylvania.

Prior to the construction of the new toll bridge at Delaware Water Gap, part of the general plan for improvement

of the traffic facilities in this area, no bridge crossing the Delaware River had its Pennsylvania terminus in Monroe County. The great advantages provided to the area by the new toll bridges at Portland-Columbia and at Delaware Water Gap far outweigh the trivial inconvenience resulting from the closing of the Delaware Bridge. These greatly improved facilities, provided by the Commission and by the two states, relieve traffic congestion in the Delaware Water Gap area, provide better access to the Pocono Mountains of Pennsylvania from Philadelphia and Northern New Jersey and expedite the heavy traffic in coal between Scranton, Pennsylvania and the metropolitan regions.

The fear expressed by the town of Belvidere and the township of White that approval by this Court of the closing and demolition of the Delaware Bridge would jeopardize the continued existence of the free bridge between Delaware, New Jersey and Riverton, Pennsylvania should not influence the decision of the Court in this proceeding. If the Legislatures by statute have vested in the Commission power and authority to replace inadequate and unsafe free bridges with toll bridges, the intent of the Legislatures must be made effective by the decision in the instant case. In the event it is desirable that the Commission be deprived of this power and authority, it is the prerogative of the Legislatures to do so.

Argument

Amici curiae, in their Point I, contend that the Court of Appeals took an "over-simplified view" of the relevant legislation, that the opinion "is barren of any mention" of the provisions in the Compacts for financing free bridges, and that "this failure" to give consideration to the provisions for financing free bridges "wholly vitiates" the court's reading of the applicable legislation.

The following is what the Court of Appeals did say (Petition, p. 27):

> "The plaintiffs, through their counsel, go back into legislation as far as 1912. They treat of the legislation there and again the legislation in 1919 and the late Twenties. They step from there to the acts creating this Commission, already mentioned, and draw certain conclusions. These conclusions are that the policy shown in the earlier statutes continues somehow to pervade what we may call the toll bridge field. Plaintiffs find in these earlier statutes a state declared policy to provide free bridges across the Delaware River. Undoubtedly, at the beginning this was so. The defendant's predecessor did buy privately owned toll bridges and did open them free to the public.
>
> "It is equally clear, however, that the legislation which came in the Thirties showed a distinct change of policy by the legislatures of the states which created the Commission and, as we know from common knowledge, throughout the country generally. Times were harder. Traffic was increasing. New facilities were necessary but the legislatures felt that the new facilities would have to be paid for by the people who got the benefit of their use. That is what the 1934 legislation provided for and that is made even clearer by the supplemental compact of 1947 which in turn was approved by the Congress of the United States."

The Court of Appeals, in effect, adopted the views expressed by Judge Forman in the District Court (Petition p. 27). Judge Forman not only states that "the law on the subject under consideration may not be interpreted from any one piece of legislation" (R. 49a), but also, in a rather lengthy opinion (R. 24a-57a), patiently follows the

request of Petitioners, examining and weighing the importance of every statute relating to the Bridge Commission and its predecessor, the "joint commission". After plowing through this underbrush of largely irrelevant material, the Court bases the decision on three plain and uncontrovertible mandates from the Legislatures, viz., the direction that the Commission replace inadequate or unsafe bridges (R. 30a), the authority granted the Commission to construct new bridges by means of revenue bonds to be amortized by the collection of tolls (R. 31a), and the power vested in the Commission to demolish and remove an old bridge which has been replaced by a new bridge (R. 44a). The District Court, viewing this historical record in proper perspective, concludes that those who desire modern, expensive facilities must pay for them, rather than enjoy a free ride at the expense of the taxpayer (R. 43a).

Point II reiterates Petitioners' contention that the covenant to demolish the free bridge is unconstitutional because such covenant is a loan or pledge of the state's credit. It is impossible to answer this contention more devastatingly than by quoting the words of the Court of Appeals (p. 30, 31):

> "We do not think this argument is any better than the main proposition. The argument that what the Commission has done is to pledge state property is so attenuated and fanciful that it does not require any answer except to say that there is nothing in it."

Point III is a complaint by the *amici curiae* that they have not been heard on several factual matters alleged by them to be of vital importance. These friends of the Court raise their voices at a very late date. They had nothing to say during the many years of planning that preceded the beginning of the construction in the Delaware Water Gap region. They did not protest when they read in the news-

papers, almost a year before the target date, that the Delaware Bridge was to be closed and demolished as part of the "comprehensive, thought-out piece of planning made after survey and full consideration by this Commission" (Petition, p. 31). They took no interest in the preparation of the Complaint which fails to allege these facts, now put forth as important. They were not in the District Court when counsel for Petitioners, on two distinct occasions, stated to Judge Forman than no factual issues are involved. They did not join in the proceeding before the Court of Appeals. What weight can be given to the plea of these "friends" who have waited until the very last second to come forward and ask for judicial review of facts which are not at issue?

In conclusion, it should be pointed out that *amici curiae* make no reference in their brief to the reasons, set out in Supreme Court Rule 19, which will be considered in influencing the court's sound judicial discretion. They must show special and important reasons for granting the writ. This they fail to do.

Conclusion

For the foregoing reasons, it is respectfully submitted that the Petition for writ of certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 505

ARTHUR D. BARTRON and ANNA KATHERINE BARTRON and NICHOLAS or NICK RONCA,

Petitioners,

vs.

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, a Body Corporate created by the Legislatures of the State of New Jersey and the Commonwealth of Pennsylvania,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

Supreme Court of the United States

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No. 505

ARTHUR D. BARTRON and ANNA KATHERINE BARTRON and NICHOLAS or NICK RONCA,

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vs.

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, a Body CORPORATE Created by the Legislatures of the State of New Jersey and the Commonwealth of Pennsylvania,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners Arthur D. Bartron, Anna Katherine Bartron, and Nicholas or Nick Ronca, respectfully pray for a rehearing of the order of this Court of February 14, 1955, denying their petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled case on November 17, 1954, the Court of Appeals having affirmed a judgment of the United States District Court for the District of New Jersey which dismissed a complaint by the instant petitioners as plaintiffs seeking an injunction to restrain the respondent Delaware River Joint Toll Bridge Commission from closing and demolishing a publicly-owned, toll-free, heavily-travelled vehicular bridge across the Delaware River between points in New Jersey and Pennsylvania.

The grounds of this petition for rehearing are as follows:

In the period since the entry of this Court's order of February 14, 1955 denying the petition for a writ of certiorari herein the Honorable Joseph J. Yosko, a member of the Senate of the Commonwealth of Pennsylvania, and the Honorable Wayne Dumont, Jr., a member of the Senate of the State of New Jersey, have each notified the attorney for the petitioners herein that legislation is about to be introduced in the respective legislatures of the two States by the aforementioned two Senators to amend the applicable interstate compact legislation of the two States relating to the powers of the respondent Delaware River Joint Toll Bridge Commission, the purpose of the said proposed amendatory legislation being to disempower the Bridge Commission from proceeding with its announced intention of closing and demolishing the free bridge across the Delaware River which is the subject matter of this case.

Petitioners respectfully suggest that the aforementioned development with respect to the proposed amendatory legislation justifies the granting of a rehearing in this matter. If such amendatory compact legislation should be adopted by the two States and approved by Congress, a question would necessarily arise as to whether such legislation, in overriding the presently operative covenant made by the Bridge Commission with its bondholders covenanting for the destruction of the free bridge, would work an unconstitutional impairment of the contractual obligation of the said covenant. The needed clarification as to the latter question which would result from a review by this Court is not difficult to perceive. The permutations which are foreseeable in the event that this Court consents to review the decision below sustaining the Bridge Commission's power to destroy the free bridge and to covenant therefor, are as follows: *First,* if the Court should rule that the presently existing compact legislation does not authorize the destruction of the instant free bridge either generally or under the specific circumstances of this case, then, of course, no amendatory legislation would be needed. *Second,*

if the Court should rule as to the covenant as such that the presently existing compact legislation does not authorize the Bridge Commission to make the covenant or that for any other reason presented in the record of this case the covenant is not binding, i.e., if the Court should disapprove the covenant apart from the question of the validity of the Bridge Commission's decision to destroy the free bridge, it would thereby be made authoritatively clear that the proposed amendatory legislation will not give rise to an unconstitutional impairment of the contractual obligation of the covenant. In other words, separate questions are presented (a) as to the Bridge Commission's statutory power to destroy the free bridge and (b) as to its power to covenant therefor on an irrevocable self-binding basis (see our Petition for a Writ of Certiorari, pp. 21-23), and so, even if the power exists to destroy the free bridge, amendatory legislation would not confront the constitutional prohibition against impairment of the obligation of contracts unless the separate power to make the covenant also exists. *Third,* if the Court should rule both that the Bridge Commission's decision to destroy the bridge is valid and that the covenant is binding, it would thereby have been made authoritatively clear that the presently proposed amendatory legislation must be dropped, or if in the interim it shall already have been adoptd that it must be repealed or remain inoperative, or that other amendatory legislation properly protecting the constitutional rights of the bondholders must be sought if the two States should continue determined to save the instant free bridge.

As was mentioned in our petition for a writ of certiorari (p. 11), the legal issues presented in this case potentially affect not one but *sixteen* of these publicly-owned free Delaware River bridges. Indeed, there has been a newspaper report published since the filing of our petition for a writ of certiorari to the effect that another one of these free Delaware River bridges, the New Hope (Pa.)—Lambert-

ville (N. J.) bridge, is expected to be replaced by a new toll bridge. See "The New Hope Gazette," Jan. 20, 1955, p. 1.

As was also mentioned in our petition for a writ of certiorari (p. 11), this Court has previously shown a ready disposition to bring into play its sparingly exercised certiorari-review powers where, as here, a question of interpretation of interstate compacts is presented in a way that vitally touches important public interests. *Cf. Delaware River Joint Toll Bridge Commission* v. *Colburn*, 310 U. S. 419, 427. *Cf.* also *West Virginia* v. *Sims*, 341 U. S. 22; *Hinderlider* v. *La Plata R. & Cherry Creek D. Co.*, 304 U. S. 92. In view of the facts and considerations heretofore set forth as to the proposed introduction of amendatory legislation in the legislatures of the two States, the need for an ultimately authoritative interpretation of the instant compact legislation has now become even greater than at the time of the filing of our petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for rehearing should be granted, and that the petition for a writ of certiorari should be granted.

ISADORE GLAUBERMAN,
Attorney for Petitioners,
921 Bergen Avenue,
Jersey City, New Jersey.

Certificate of Counsel Annexed to Petition for Rehearing

I certify that the petition for rehearing to which this certificate is annexed is presented in good faith and not for delay. I also certify that the petition for rehearing is restricted to the grounds specified in Rule 58, paragraph 2.

ISADORE GLAUBERMAN,
Attorney for Petitioners.